Doing business in India
“I leave India with a profound admiration for the remarkable development gains this country has achieved in recent decades. India’s experience holds valuable lessons for the World Bank Group and for countries around the world”
- Jim Yong Kim, World Bank Group President March 2013

“The fundamentals of our country are very brilliant and I don’t see any reason why the great Indian story has lost so fast its sheen and the reason for the pessimism”
- Indra Nooyi, Chairperson and Chief Executive, Pepsico, November 2013

“Despite the current downturn, long-term prospects remain bright for India. India possesses the fundamentals to grow at sustained high rates over the next several decades”
- Martin Rama, World Bank's Chief Economist for the South Asia region April 2013

“India's biggest strength in the coming years is going to be her demographic dividend. More than 50% of our population is under 25 years and soon, one-fifth of the world’s working-age population will be in our country”
- Pranab Mukherjee, President of India while receiving the National Innovation Council’s Report to the People 2013 in November 2013.

“India is already adding more than China to the world’s working-age population. Although this increment will lessen in the coming decades, India’s share of the global workforce will climb towards 30% by 2030 ...”
- Standard Chartered, 6 November 2013.

“It is important to take a moment to remind ourselves of this country’s extraordinary achievements. Some are well known in the world at large—the emergence of a world-class IT industry, the rapid growth of exports and the development of a sophisticated financial sector. India has a strong voice in the global discussion of many key issues, including trade and climate change ... These successes highlight the gradual process of reform India has undergone during these years of rapid growth. Regulatory changes have been significant ... From abroad, India fits comfortably into the category of countries that are doing well. Its growth is strong by advanced country standards ...”
- Naoyuki Shinohara, Deputy Managing Director, International Monetary Fund May 2013

“In the past two decades, the rate of growth more than doubled to an average rate of over 7% per annum and the Indian economy was put on an upward growth trajectory. Naturally, there will be periods of ups and downs. The economic cycle presents us years of high performance and years of modest performance. But the important thing to note is that highs are getting higher, and so are the lows”
- Dr. Manmohan Singh, Prime Minister, India, at his address at the Hindustan Times Summit, 2013 in December 2013.

“FDI flows into India are quite positive ... think we can absorb - easily absorb - US$50b of FDI every year into India”
- P. Chidambaram, Finance Minister, India April 2013

“Fundamentals are still better than people generally believe. People are caught up in all the doom and gloom that surrounds India at the moment. But if we take a step back and do think about those fundamentals, then it seems to me that there are good reasons to believe that growth will be stronger in this current fiscal year than the last fiscal year. Fiscal policy, monsoon and the exchange rate are clearly more helpful”
- Robert Prior-Wandesforde, Director, Asian Economics Research, Credit Suisse, September 2013.
India has been a favored destination for investment in the light of its large domestic consumption-based economy, favorable demographics, skilled workforce and the continuing focus on emerging markets. Over the past decade, India has registered an impressive growth performance on the strength of far-reaching structural reforms. The country’s GDP grew by 7.9% for the 10 year period ending 2012-13, despite the global economic meltdown of recent years.

In recent times, the country has been facing certain challenges such as a depreciating rupee, rising inflation, current account deficit, etc. In response, the Government of India has attempted a set of reforms. It has raised FDI limits in several sectors, including telecom and single-brand retail. The new Companies Act was recently passed to strengthen the existing corporate governance framework. These reforms are expected to usher the next phase of economic growth for India.

We have developed this guide with the intent of giving busy executives an overview of the financial and demographic profile of India, the economic climate of key sectors, and an insight into the regulatory framework, forms of business organization and relevant tax regime in India. The information provided in this guide has been validated up to 1 November 2013.

The companies that are doing business in India, or planning to do so, would be well advised to obtain current and detailed information from our experienced professionals.

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

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Foreword
Glossary of frequently used terms

ADR  American Depository Receipt
AMT  Alternate Minimum Tax
BPO  Business Process Outsourcing
CAGR Compounded Annual Growth Rate
CBDT Central Board of Direct Taxes
CCI  Competition Commission of India
Cos Act Companies Act, 1956
New Cos Act Companies Act, 2013
DIPP Department of Industrial Policy and Promotion
DTC Direct Tax Code
DTAA Double Taxation Avoidance Agreement
ECB External Commercial Borrowing
FCCC Foreign Currency Convertible Bond
FDI Foreign Direct Investment
FEMA Foreign Exchange Management Act, 1999
FII Foreign Institutional Investor
FIMMDA Fixed Income Money Market and Derivatives Association of India
FIPB Foreign Investment Promotion Board
FTP Foreign Trade Policy
FY Financial Year
GATT General Agreement on Tariffs and Trade
GDP Gross Domestic Product
GDR Global Depository Receipt
GOI Government of India
GST Goods and Service Tax
INR Indian Rupee
IRDA Insurance Regulatory and Development Authority
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT</td>
<td>Information Technology</td>
</tr>
<tr>
<td>IT Act</td>
<td>Income Tax Act, 1961</td>
</tr>
<tr>
<td>ITES</td>
<td>IT Enabled Services</td>
</tr>
<tr>
<td>km</td>
<td>Kilometers</td>
</tr>
<tr>
<td>LLP</td>
<td>Limited Liability Partnership</td>
</tr>
<tr>
<td>MAT</td>
<td>Minimum Alternate Tax</td>
</tr>
<tr>
<td>MNC</td>
<td>Multinational Company</td>
</tr>
<tr>
<td>MoF</td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>MoP</td>
<td>Ministry of Power</td>
</tr>
<tr>
<td>MoPNG</td>
<td>Ministry of Petroleum and Natural Gas</td>
</tr>
<tr>
<td>NBFC</td>
<td>Non-Banking Financial Company</td>
</tr>
<tr>
<td>NELP</td>
<td>New Exploration and Licensing Policy</td>
</tr>
<tr>
<td>NRI</td>
<td>Non-resident Indians</td>
</tr>
<tr>
<td>PAN</td>
<td>Permanent Account Number</td>
</tr>
<tr>
<td>PIO</td>
<td>Person of Indian Origin</td>
</tr>
<tr>
<td>QFI</td>
<td>Qualified Foreign Investor</td>
</tr>
<tr>
<td>ROI</td>
<td>Return of Income</td>
</tr>
<tr>
<td>RBI</td>
<td>Reserve Bank of India</td>
</tr>
<tr>
<td>ROC</td>
<td>Registrar of Companies</td>
</tr>
<tr>
<td>SEBI</td>
<td>Securities and Exchange Board of India</td>
</tr>
<tr>
<td>SEZ</td>
<td>Special Economic Zone</td>
</tr>
<tr>
<td>STT</td>
<td>Securities Transaction Tax</td>
</tr>
<tr>
<td>TRAI</td>
<td>Telecom Regulatory Authority of India</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>

Notes:
1. Reference can be made to Appendix 2 for conversion rates
2. FY represents a fiscal year, for eg: Fiscal year 2013 is represented as FY13
3. H represents half year period, for eg: First half year of 2013 is represented as 1H13
4. Q represents quarter of a year, for eg: First quarter of 2013 is represented as Q113
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India: at a glance

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A.1 Geographical profile

Total area: 3.29m sq km

Distribution of total area occupied by India

- 90% Land
- 10% Water
- 48% Arable
- 48% Non-arable
- 4% Permanent crops

Source: CIA World Fact Book

Capital: New Delhi

India has 28 states and 7 union territories.

Bordering countries are China, Nepal and Bhutan to the northeast; Afghanistan and Pakistan to the northwest; Myanmar and Bangladesh to the east; and Sri Lanka to the south.

A.1.1 Geological characteristics

<table>
<thead>
<tr>
<th>Climate</th>
<th>India’s climate can be described as tropical monsoon in south India and temperate in north India. The country has four seasons —summer (March to June), monsoon (June to September), post-monsoon (October to November) and winter (December to February).</th>
</tr>
</thead>
</table>

| Natural resources | The country’s natural resources include coal (the fourth-largest reserves in the world), iron ore, manganese, mica, bauxite, titanium ore, chromite, natural gas, diamonds and petroleum, limestone and arable land. |

---


A.1.2 Transportation

<table>
<thead>
<tr>
<th>Flora and fauna</th>
<th>More than 47,000 species of flora and over 89,000 species of fauna are found here.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major rivers</td>
<td>Ganga, Yamuna, Brahmaputra, Godavari, Krishna, Cauvery, Narmada and Tapti are the major rivers in the country.</td>
</tr>
<tr>
<td>Coastline</td>
<td>India has a coastline of almost 7,000km encircling mainland. The Andaman and Nicobar and the Lakshadweep islands are also a part of the country.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Railways</th>
<th>64,600 km$^5$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roadways</td>
<td>4.69 m km$^6$</td>
</tr>
<tr>
<td>Waterways</td>
<td>14,500 km$^7$</td>
</tr>
<tr>
<td>Number of airports</td>
<td>454$^8$</td>
</tr>
</tbody>
</table>

---


A.2 Demographic profile

<table>
<thead>
<tr>
<th>Population</th>
<th>1.2b (urban: 31.3% rural: 68.7%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population growth rate</td>
<td>1.28% each year</td>
</tr>
<tr>
<td>Birth rate</td>
<td>20.24 (births per 1,000 population)</td>
</tr>
<tr>
<td>Death rate</td>
<td>7.39 (deaths per 1,000 population)</td>
</tr>
<tr>
<td>Life expectancy</td>
<td>67.48 years</td>
</tr>
<tr>
<td>Population sex ratio</td>
<td>943 females per 1000 males</td>
</tr>
<tr>
<td>Population households</td>
<td>247m</td>
</tr>
</tbody>
</table>

A.2.1 Age structure

India has a young population, with around 65% in the age group of 15 to 64 years.

The median age in the country is around 26.7 years, which is lower than many countries in the world.

Source: CIA World Fact book

---


A.2.2 Cultural diversity

<table>
<thead>
<tr>
<th>Religions</th>
<th>Hinduism, Islam, Christianity and Sikhism are the four main religions in India. Others include Buddhism, Jainism, Judaism and Zoroastrianism.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Languages</td>
<td>Hindi is the country’s official and most widely spoken language. In addition to Hindi, there are 21 official languages, including Bengali, Telugu, Marathi, Tamil, Urdu and Gujarati. English is widely used in national, political and commercial communication.</td>
</tr>
<tr>
<td>Festivals</td>
<td>India celebrates many festivals, including Deepawali, Holi, Guru Nanak Jayanti, Rakshabandhan, Christmas, J anmashtami and Id-ul-Zoha.</td>
</tr>
</tbody>
</table>
A.2.3 Education and labor force

**Literacy rate: 74.04% (male: 82.14% female: 65.46%)**

Education: India has one of the largest school-age populations in the world. It has a well-established education system, with almost 1.4m schools with more than 248.5m students.12

In the area of higher education, India has 700 universities and more than 8,500 technical institutions and 35,000 colleges.13 There is a marked difference in enrolment levels witnessed at the primary and higher education levels. The Indian Institutes of Technology (IIT) and the Indian Institutes of Management (IIM) are a group of premier institutions in India that offer technical and management degrees, respectively.


Labor force: India’s labor force stood at around 486.6m in 2012.\textsuperscript{14} India has the largest employable talent pool in the world (4.74m in FY12), which is growing at the rate of 15%-18%.\textsuperscript{15} The majority of the labor force is engaged in community, social and personal services (including public administration, defense and other services), followed by manufacturing.

<table>
<thead>
<tr>
<th>Gross enrolment ratio (2012)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary (I-V)</td>
</tr>
<tr>
<td>Upper primary (VI-VIII)</td>
</tr>
<tr>
<td>Secondary (IX-X)</td>
</tr>
<tr>
<td>Senior secondary (XI-XII)</td>
</tr>
<tr>
<td>Higher education</td>
</tr>
</tbody>
</table>

*The gross enrolment ratio (GER) is a statistical measure used in the education sector in its education index to determine the number of students enrolled in school at several different grade levels, and examined to analyze the ratio of students who qualify for the particular grade level.

Employment by industry (2011)

- Community, social and personal services: 40%
- Manufacturing: 5%
- Finance, insurance, real estate, etc.: 9%
- Transport, storage and communications: 11%
- Agriculture, hunting, etc.: 22%
- Mining and quarrying: 3%
- Construction: 3%
- Electricity, gas and water: 3%
- Wholesale and retail trade: 4%

Source: Ministry of Human Resource Department, Economic Survey 2012-13


A.3 Political profile

India is a secular state and the largest democracy in the world with a parliamentary form of government. The GOI, officially known as the Union Government, was established by the Constitution of India in 1950. It is divided into three distinct but interrelated segments—the legislative, the executive and the judiciary.

Legislative branch: at the central level, India has a bicameral Parliament comprising the Rajya Sabha (Council of States) and the Lok Sabha (People’s Assembly). The primary function of the Parliament is to pass laws on matters specified in the constitution.

At the state level, some states operate through a single Legislative Assembly, while others have a bicameral structure and operate through a legislative assembly and a legislative council.

Executive branch: The executive arm comprises the President, the Vice President and the Council of Ministers, headed by the Prime Minister.
The President of India: is the head of the GOI and the Commander in Chief of the armed forces. The role of the President is primarily ceremonial in nature, and is required to act in accordance with the advice of the Council of Ministers. The President is elected for a period of five years by an electoral college comprising elected members of both the houses of Parliament and the state legislatures. The current President of India is Shri. Pranab K. Mukherjee.

The Vice President: the ex-officio Chairman of the Rajya Sabha and takes on the functions of the President when the latter is unable to discharge their duties. The Vice-President is elected by both the houses of Parliament for a five-year term. The current Vice President of India is Mohammad Hamid Ansari.

The Prime Minister: the real executive power of running the Central Government lies with the Council of Ministers, led by the Prime Minister of India (collectively known as the Union Cabinet). The Prime Minister is appointed by the President after the Lok Sabha elections, which take place every five years. The current Prime Minister of India is Dr. Manmohan Singh.

Judiciary branch: the Indian judiciary is independent of the Executive. The Supreme Court is the apex body in the judiciary branch and comprises the Chief Justice of India and 25 associate judges.

In addition to the Supreme Court, the judiciary consists of high courts at the state level and district courts at the district level.

Political parties of India: major political parties in India include the Indian National Congress, the Bhartiya Janata Party, the Janata Dal, the Nationalist Congress Party, the All India Trinamool Congress, the Communist Party of India and the Samajwadi Party.
A.4 Economic profile\textsuperscript{16}

India has systematically evolved from a closed-door economy to an open one, since the beginning of economic reforms in the country in 1991. These reforms have had a far-reaching impact and have helped India substantially realize its significant growth potential. Currently, the Indian economy is characterized by the Government’s liberalized foreign investment and trade policy, with a significant role being played by deregulation and the contribution of the private sector.

India now ranks as the 10\textsuperscript{th} largest economy in the world and the 3rd-largest in terms of GDP on its purchasing power parity (PPP).

The country has developed into a trillion-dollar economy with a largely self-sufficient agricultural sector, a diversified industrial base and a stable financial and services sector.

Structural shift from an agrarian to a services-driven economy

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{distribution_gdp}
\caption{Distribution of GDP (1970-71) vs. 2012-13}
\end{figure}

\begin{itemize}
\item Services
\item Industry
\item Agriculture and allied activities
\end{itemize}

Source: RBI

GDP: India is well placed on the global map in terms of its GDP growth. According to the Economic Survey 2012–13, the country’s GDP posted a CAGR of 7.9% for the 10-year period ending 2012–13. Its GDP grew at 5% in FY13. The IMF has predicted a GDP growth rate of 5.1% in FY14 for India.

Domestic consumption fueling economic growth: India continues to benefit from the growing domestic demand from a young population, whose consumption is driving the expansion of the middle class. By 2025, India is expected to become the world’s fifth-largest consuming country. An emerging rural consumer base is also contributing to this demand. Compared with other countries, India has been and continues to be relatively insulated from external shocks due to its strong domestic consumption pattern and savings culture. The country has one of the highest savings rates in the world. It outperforms various developed nations with an estimated savings rate (as a percentage of GDP) at 30.8% in 2012, compared with a world average of 24.8%

Increasing urbanization and modern technology: urbanization and innovation have brought about a remarkable change in the lifestyles and consumption pattern of Indians. The percentage of urban population in India has consistently increased from 25.5% in 1990 to 30.9% in 2010, and is further expected to rise to 39.8% in 2030 and 51.7% by 2050 (higher than the proportion of rural population). Private domestic consumption accounts for around 55% of India’s GDP and is one of the key factors driving overseas investments in it.

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17  Ready for the transition, EY, 2012.
India’s competitive position in the world

India’s economy has strong fundamentals and is host to several eminent global corporate giants that are leaders in their respective fields. According to the Global Competitiveness Report 2013–14, which covers 148 countries, India holds the 60th position. The country ranks higher than many countries in key parameters such as market size (3rd) and innovation (41st). It also has a sound financial market (19th) and boasts of reasonably sophisticated (42nd) and innovative businesses (41st).

FDI in India: according to UNCTAD’s World Investment Prospects Survey 2012–14, India is the third-most attractive destination for FDI (after China and the US) in the world. Indian markets have significant potential and offer prospects of high profitability and a favorable regulatory regime to investors.

FDI in India (USD b)

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount USD b</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY07</td>
<td>22.8</td>
</tr>
<tr>
<td>FY08</td>
<td>34.8</td>
</tr>
<tr>
<td>FY09</td>
<td>41.9</td>
</tr>
<tr>
<td>FY10</td>
<td>37.7</td>
</tr>
<tr>
<td>FY11</td>
<td>34.8</td>
</tr>
<tr>
<td>FY12</td>
<td>46.6</td>
</tr>
<tr>
<td>FY13*</td>
<td>36.9</td>
</tr>
</tbody>
</table>

Source: RBI Bulletin
FDI includes credit portion of direct investment in equity, reinvested earnings and intercompany debt transactions.
*Provisional

Break up of FDI by sectors (FY13)

- Services*: 21.6%
- Housing, real estate and construction: 39.6%
- Automotive: 14.5%
- Metallurgical industries: 6.9%
- Drugs and pharmaceuticals: 5.0%
- Others**: 5.9%
- Others: 6.5%

Source: Department of Industrial Policy and Promotion, Government of India
*‘Services’ includes financial and non-financial services
**‘Others’ includes computer software and hardware, power, automobile and chemical industry
Sectors attracting highest FDI equity inflow: the services sector attracts the highest amount of foreign capital to India (US$37.2b between April 2000 and March 2013 with a 19% share of the economy).\(^1\) The services sector was also the largest recipient of FDI in the country in FY11, FY12 and FY13.

Inflow of FDI in India: Mauritius has been the largest source of FDI inflows into India for many years. Between April 2000 and March 2013, cumulative FDI inflows from Mauritius to India reached US$73.7b.\(^2\) Other top investors in the country include developed nations such as Singapore, the UK, Japan, the US and the Netherlands.\(^3\)

![Break up of FDI by countries of origin (FY13)](image)

Foreign exchange reserves and industrial production: India’s foreign exchange reserves stood at US$282.9b as of 25 October 2013.\(^4\)

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1. FDI Statistics, Department of Industrial Policy and Promotion website, [http://dipp.nic.in/English/Publications/FDI_Statistics/FDI_Statistics.aspx](http://dipp.nic.in/English/Publications/FDI_Statistics/FDI_Statistics.aspx), accessed 4 June 2013.
2. FDI Statistics, Department of Industrial Policy and Promotion website, [http://dipp.nic.in/English/Publications/FDI_Statistics/FDI_Statistics.aspx](http://dipp.nic.in/English/Publications/FDI_Statistics/FDI_Statistics.aspx), accessed 4 June 2013.
Doing business in India

As reflected by the Index of Industrial Production (IIP), India’s industrial performance remained sluggish in 1Q13 before reporting a growth of 2.1% in 3Q13. Manufacturing, the most dominant sector in the industry, also showed signs of deceleration in its growth.\(^{23}\)

A.5 Financial market

India has a robust, transparent and stable financial market, which has gradually evolved from a highly controlled system to a liberalized one.

RBI: the RBI, established in 1935, is India’s central bank and it regulates the country’s credit, money and foreign exchange markets. It is also responsible for formulating its monetary policy, issuing currency, prescribing exchange control norms and acting as a banker to other banks.

Credit market

India has a strong credit market with a wide range of financial institutions, including commercial, regional, rural and cooperative banks, and NBFCs.

Advances of around INR56.1t and deposits of more than INR73.0t were made in Indian commercial banks as on 18 October 2013\(^2\).
Doing business in India

The State Bank of India is the largest public sector bank in India. ICICI Bank is the largest private sector bank (the second largest overall) in the country.

Below is a table stating the number of banks and credit institutions in India:

<table>
<thead>
<tr>
<th>Type of institution</th>
<th>Total</th>
<th>Grand total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial banks</td>
<td>25</td>
<td>89</td>
</tr>
<tr>
<td>• Public sector banks</td>
<td></td>
<td>26</td>
</tr>
<tr>
<td>• Private sector banks</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>• Foreign banks</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>Urban cooperative banks</td>
<td></td>
<td>1,618</td>
</tr>
<tr>
<td>Rural cooperative credit institutions</td>
<td></td>
<td>94,531</td>
</tr>
</tbody>
</table>

Source: RBI

Public sector banks dominate the banking industry and held 73% of its assets in FY12. However, private sector banking is growing at a rapid pace, with 13,452 branches as of August 2013. The RBI has initiated policies to grant new banking licenses to increase banking penetration in India.

Capital markets

SEBI, established in 1992, is the regulatory authority for capital markets in India.

The National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE) are the premier stock exchanges of the country. The BSE is the world’s largest stock exchange in terms of its number of listed companies (more than 5,000). The NSE is the third-largest stock exchange in the world in terms of its number of transactions.

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Recent developments and outlook

As a part of its monetary policy, the RBI regulates the policy rates to check excess liquidity and slow growth. While the cash-reserve ratio has been maintained at 4% the RBI increased the repo rate to 7.5% in September 2013 to curtail demand and contain inflationary pressures. Inflationary pressure in the economy had eased partially, with the Wholesale Price Index (WPI) falling below the 5% mark for the first time since November 2009. However, in 2QFY13, the trend reversed with increase in WPI inflation. The Consumer Price Index (CPI) also remains persistently high. The RBI has signaled that the monetary policy will need to anchor inflation expectations while addressing growth risks at the same time.

Outlook:

The Government has outlined key action points to propel India to a high-growth trajectory.

• The Government has made provision of INR140b for recapitalization of banks in the FY14 Union Budget to protect the financial health of public sector banks and financial institutions.

• The proposed DTC Bill, which is to replace the IT Act, aims to increase transparency and tax compliance in the economy. The Government’s planned Constitutional Amendment Bill to introduce the GST is expected to bring multiple taxes, such as octroi, CENVAT, central sales tax, state sales tax, under a single regime and thereby eliminating their complexity.

• In August 2013, the New Cos Act was enacted to replace the Cos Act and enhance corporate governance in India. This law is expected to make it easier and more efficient to do business in India by instilling self-compliance, accountability and greater transparency.

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# Key sectors: an overview

<table>
<thead>
<tr>
<th>B.1</th>
<th>Aerospace and defense</th>
<th>22</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.2</td>
<td>Automotive</td>
<td>26</td>
</tr>
<tr>
<td>B.3</td>
<td>Banking</td>
<td>28</td>
</tr>
<tr>
<td>B.4</td>
<td>Capital markets</td>
<td>33</td>
</tr>
<tr>
<td>B.5</td>
<td>Life sciences</td>
<td>40</td>
</tr>
<tr>
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B.1 Aerospace and defense

The aerospace and defense industry is an emerging sector in India, with the Indian military expenditure expected to reach approximately US$71b to US$100b over the next five to seven years. It is the eighth largest in the world in terms of military expenditure.\(^{32}\) India is the largest importer of conventional defense equipment in the world. Around 65%–70% of India’s defense requirement is imported from global aerospace and defense companies. India’s defense spending has been increasing over time in the light of volatile neighboring countries, internal security issues and the need for upgrading or replacement of legacy Russian-origin equipment.

Currently, for FY14, the defense budget has been pegged at US$33.56b. Out of this capital expenditure, which primarily caters to the acquisition of defense hardware and modernization requirements of defense services, accounts for US$14.32b. Of this, capital expenditure allocation for FY14, the share of the Indian Air Force is the largest with a 44% allocation, while the share of the Indian Navy and Indian Army is 27% and 21%, respectively. In FY14, the GOI kept the defense budget allocation to a very modest level of 1.79% of GDP.\(^{33}\) The revenue expenditure, which mainly accounts for the “operating expenditure,” is pegged at US$19.26b.\(^{34}\)

The Indian aerospace and defense industry is witnessing an unprecedented growth, with the industry sector on the threshold of entering a new era where it will assume increased responsibility to make the nation self-reliant in defense production. With the shortlist of the first program (TCS 2000) under the “MAKE” category being announced, India is fast developing into a manufacturing hub for global aerospace corporations wanting to leverage India’s proven advantage in cost-efficient manufacturing, talent base, product design and IT competitiveness.


\(^{33}\) Manu Pabby, Lowest Defense Budget increase in over 30 years, Indian Express, 1 March 2013, via Factiva, © 2013 Indian Express Online Media Pvt. Ltd.

\(^{34}\) Eye on defense, EY, March 2013.
The Ministry of Defense (MOD) has made it amply clear in the recently announced Defense Procurement Procedures (DPP 2013) that it will give clear preference to those categories of procurement that mandate the indigenous manufacture of defense equipment, and justification will have to be provided to categorize procurement projects under categories requiring imports.

**Regulatory scenario**

a. **FDI**
   
The policy for FDI in the defense sector was notified in 2001, where the industry was opened to private sector participation. FDI is permissible up to 26%—subject to licensing and GOI approval.
   
   As per the recent press note 6 of 2013 dated 22 August 2013 issued by GOI, an increased limit of FDI would be considered by the Cabinet Committee on Security (CCS) and allowed on a case to case basis to ensure access to modern "state-of-the-art" technology.

b. **Defense procurement procedures**
   
The DPP 2013 essentially lays down the procurement procedure of all capital acquisitions (except medical equipment) undertaken by the MOD, the Defense Services and Indian Coast Guard —both from indigenous sources and imports. The DPP ensures expeditious procurement of the approved requirements of the Indian Armed Forces in terms of capabilities sought and time frame prescribed by optimally utilizing allocated budgetary resources. The latest version of DPP will be applicable to projects announced on or after 1 June 2013.

c. **Offset policy**
   
   Offset is a form of counter trade, which is an industrial compensation for the importing country as a condition of import from the exporting country. Offsets are utilized by countries to use their purchasing power to develop domestic capabilities and channelized investments and technology to favored domestic sectors.
In its quest for self-reliance in defense production, the GOI has been continuing its efforts to indigenize the production of defense equipment. One of the major initiatives by the GOI in this regard was the introduction of the “offset policy” as part of DPP 2005. The latest version of the offset policy was announced in August 2012 and is applicable to projects announced on or after 1 August 2012. The Indian offset policy requires a foreign company to invest a minimum of 30% of the indicative cost of the project in the designated sector of the Indian economy if the contract is valued at more than INR3b (US$48.59m). The designated sectors include defense, civil aerospace and internal security sectors. A list of products and services provided under these sectors constitute the eligible products and services for offset discharge.

Offset obligations can be discharged by direct purchase of, or executing export orders for, eligible products and components manufactured by, or services provided by, Indian industries. Offset obligations can also be discharged through direct foreign investment in equity, through technology transfer or through the provision of equipment in Indian industries for industrial infrastructure for services, co-development, joint venture and coproduction of eligible products and components. Transfer of technology to the Defence Research and Development Organisation will also be eligible for offset credits. Furthermore, the defense procurement policy also allows banking of offset credits. If the vendor is able to create more offsets than their obligations under a particular contract, surplus offset credits can be banked.

The offset policy is applicable to capital acquisition programs categorized as:

- “Buy Global,” i.e., an outright purchase from a foreign or Indian vendor; procurement offset is not applicable in the case of a bid from an Indian company offering an indigenously developed product (with at least 50% of indigenous content in the product)
- “Buy and Make with transfer of technology,” i.e., a purchase from a foreign vendor followed by licensed production

The Defense Acquisition Council may, after due deliberation, also prescribe varying percentages above 30% or waive off the requirement for offset obligations in very special cases.
d. Industrial licensing

The defense sector is also subject to an Industrial License (IL) regime. There are certain specific conditions related to the grant of an IL, which require, inter alia, (i) that the applicant should be an Indian company or partnership (ii) the majority of the board of directors and CEO should be resident Indians (iii) clearance through background checks for foreign collaborators and domestic promoters.

License applications are considered and licenses are provided by the DIPP and Ministry of Commerce, in consultation with the MOD. The DIPP has a list of licensable defense items on its website. For products that are not on this list, an IL is not required.

Recent developments and industry outlook

In the 11th Plan Indian Defense Budget grew at a CAGR of approximately 13% in the 11th Five Year Plan, and India emerged as one of the most promising markets for global aerospace and defense companies. There has been an increasing focus on moving on from a buyer-seller to a collaborator, joint developer, etc. The GOI now wants to ensure that its spending power leads to India gradually becoming a net exporter of defense equipment. Going forward, the performance of the Indian Aerospace and Defense market is forecasted to grow at an anticipated CAGR of 13.6% for the five-year period of 2011-16, which is expected to drive the market to a value of US$45.73b by the end of 2016 (from a value of US$24.1b in 2011).³⁵

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³⁵ Aerospace and Defense in India - Industry Profile, Datamonitor, March 2013, via Thomson Research.
B.2 Automotive

The Indian automobile industry is estimated to have a total turnover of US$80b for FY13. The Indian automotive sector experienced an overall growth of more than 2% in FY13. Staying among the top three markets across a number of vehicle segments, India is the world’s largest three-wheeler market, second-largest two-wheeler and heavy commercial vehicle market, and the third-largest light commercial vehicle market.

The country is rapidly being established as a small vehicle product development hub, enabled by the large volumes needed for the domestic market and the ability to reduce costs through efficient engineering and manufacturing. There are as many as 12 multinational players in the Original Equipment Manufacturer (OEM) segment in the Indian market, and a number of expansions or new projects announced during 2011-12 are under way, with new capacity expected to come on stream from 2014 onward. Furthermore, proximity to the Southeast Asian and African markets and well-connected ports makes India an ideal location to develop as a small vehicle manufacturing hub. India currently exports more than 555,000 passenger vehicles and close to 2 million two-wheelers to various parts of the world, and many OEMs are planning further exports of various new launches.

Regulatory scenario

FDI of up to 100% is allowed under the automatic route. The GOI also permits a 200% weighted deduction on R&D expenditure under the IT Act. Moreover, most state governments offer additional incentives to vehicle manufacturers, given the considerable investments and employment generation capacity of this industry, in order to encourage them to set up units in their respective states.

Among policy drafts, on the anvil is India’s Science, Technology and Innovation Policy 2013, in which, amid other things, contributions are being sought for focus on engineering and advanced manufacturing for the automotive manufacturing industry to help in fueling and sustaining future growth.
At the beginning of FY14, the GOI unveiled a seven-point strategy to boost exports, including the extension of import tax waiver and interest subsidy, aimed at incentivizing domestic manufacturing while encouraging import substitution. It also extended the interest subsidy scheme on labor-intensive exports by a year to March 2013, thereby benefiting automotive vehicle and component companies across India.

India’s New Manufacturing Policy, announced in 2011, aims to increase the share of manufacturing to 25% of the GDP from its current level of 16% and identifies the automotive industry as one of the focus sectors with a competitive advantage.

Recent developments and industry outlook

The basic sub class 1500cc segment continues to form the largest share of passenger vehicle sales, producing more than 1 million vehicles annually. Being one of the most price-sensitive segments, the growth was lower due to increasing petrol prices and interest rates. The year also saw rapidly shifting consumer preference toward diesel vehicles, leading to OEMs introducing diesel products across product segments. The demand for diesel vehicles has since moderated with the announcement of a new pricing policy for diesel fuel and more market-driven fuel pricing.

In the face of slowing demand, overcapacity was seen building up across the industry; however, given the emerging dual focus on servicing the domestic market and, at the same time, building export capabilities, near-term excess capacity was seen as unavoidable. For a price-aggressive market such as India, exports enabled scale for automotive manufacturers to compete effectively. India’s emergence as a vehicle and component developer continued to be on the automotive industry’s priority list for the year FY14, with emphasis on codesigning and codevelopment.

According to industry forecasts, India is poised to become one of the top five vehicle-producing nations. By 2020, the passenger vehicle production is set to treble from the levels in 2011-12 and the size of the component sector is set to grow from US$42b to US$110b.
B.3 Banking

Financial markets in India have acquired enhanced depth and liquidity over the years. Steady reforms since 1991 have led to growing linkages and integration of the Indian economy and its financial system with the global economy. Specifically, the financial sector reforms brought about a complete overhaul of the Indian banking sector, which was hitherto a highly regulated and administered sector. These reforms encouraged new market entry of private players and foreign banks, making the banking sector a more market-driven one with increased efficiency and productivity.

However, in the recent times, weak global economic prospects and continuing uncertainties in the international financial markets have had their impact on the emerging market economies, leading to constraints in availability of funding for banks and corporate entities. In India, reforms have continued, with a view to building a robust and resilient financial system.

The Indian financial system is dominated by banks and, hence, banks’ ability to withstand stress is critical to overall financial stability. Given this, more stringent capital and liquidity measures for commercial banks have been implemented and steps have been taken to build provision buffers. Indian commercial banks have prescribed Basel III capital and liquidity standards for banks and adopted new prudential compensation practices. In addition to this, various institutional mechanisms and tools to monitor systemic risks have been put in place. Efforts are being made to develop effective macro prudential supervision.

The banking sector in India broadly comprises three types of commercial banking entities, based on the nature of their ownership. These are public sector banks, private sector banks and foreign banks. The public sector banks still continue to dominate the banking space with a deposit market share of more than 75%. Despite all efforts undertaken post-1990s to boost banking in India, the banking sector penetration remains low.
Apart from commercial banks, measures have been taken to strengthen urban cooperative banks, NBFCs and micro-finance institutions. Alongside reforms in various segments of the financial system, the focus on financial inclusion continues.

The banking sector intermediation, as measured by the total loans as a percentage of GDP, has remained more or less the same. There is significant scope to drive financial inclusion in India, especially in rural areas.

**Regulatory scenario**

Regulator: the sector is regulated by the RBI. Key enactments governing this sector include the Banking Regulation Act, 1949; the RBI Act, 1934; and the Cos Act. The RBI regularly reviews and refines the regulatory and supervisory policies to enable a strong capital base, effective risk management and best corporate governance standards in the banking sector. In recent times, the focus has also been on improving credit delivery, increased vigilance, monitoring salaries of key personnel, customer service and promoting financial inclusion.

FDI policy in banking: the total aggregate foreign investment in private banks from all sources (FDI, FII and NRI) is limited to 74%, with a limit of 10% for individual FIIs and the aggregate limit for all FIIs restricted to 24% which can be raised to 49% (if more than 49% is invested, then GOI’s approval will be required) with the approval of the board or general body. The FDI norms are not applicable to public sector banks, where the FDI ceiling is still capped at 20%.
Capital requirements: Basel III stipulates that all banks should attain Capital to Risk (weighted) - Assets Ratio (CRAR) (inclusive of Capital Conservation Buffer (CCB)) of 11.50% and common equity Tier I CRAR (inclusive of CCB) of 8% by 31 March 2018 (By 31 March 2015, CRAR (inclusive of CCB) of 9.625% and common equity Tier I CRAR (inclusive of CCB) of 6.125% is to be achieved). Domestic and foreign banks have been allowed by the RBI to augment their capital funds by issuing certain hybrid instruments.

Recent developments and industry outlook

- **Financial inclusion to drive banking growth:** under the previous Fiscal Inclusion Policy (FIP), 2010, State Level Banker’s Committees (SLBCs) had identified certain unbanked villages with a population of 2,000. Under this policy, the banks have been able to cover 99.7% of the unbanked villages identified by the RBI. In its new annual monetary policy, the RBI has now mandated SLBCs to prepare a road map to cover all unbanked villages with a population of less than 2,000 and also prepare a 3 year layout under the FIP that achieves the same. The RBI plans to specify financial inclusion plans as a key criterion for granting new banking licenses. The RBI extended the scope of the business correspondent (BC) model to allow listed companies, with large distribution network in rural areas, to act as BCs. This marked the entry of telecom operators and large Fast Moving Consumer Goods (FMCG) companies in the BC model.

- **Focus on mobile banking to drive penetration of banking services in India:** several leading banks have tied up with telecom operators and handset manufacturers to provide a mobile banking facility. Increasing mobile penetration, coupled with higher smartphone adoption, has led to an uptrend in mobile banking. The number of transactions through mobile banking witnessed a jump of 64% in the period of April to December 2012.

- **Granting of additional banking licenses:** the GOI has released the guidelines on 22 February 2013 to grant additional banking licenses. Entities in the private sector, public sector and NBFCs are eligible to set up a bank, following which, we should see several new entrants into the Indian banking sector.

36 RBI’s Annual monetary policy 2013-14.
Setting up of electronic payments systems: the National Payments Corporation of India has set up an inter-bank mobile payment service and an indigenous payments network, “RuPay PaySecure,” which was launched on 24 June 2013, to enable online payments in a secured manner. It is likely to reduce the costs of financial transactions through banks and make the process of payment transfer quicker.

Microfinance: the microfinance sector in India has gone through turbulence in the past years. The GOI has now stepped in with the Microfinance Institutions (Development and Regulation) Bill, 2012, which puts the sector under the purview of the RBI.

Revision in rules to set up foreign banks in India: in 2005, the RBI announced a road map for the setup of foreign banks in India. The road map inter alia proposed two phases to achieve a Wholly Owned Subsidiary (WOS) for foreign banks in India wherein, during the first phase, foreign banks were permitted to establish presence in India by way of setting up a WOS or conversion of the existing branches into a WOS. The second phase proposed to accord full national acceptance to WOS structures set up by foreign banks in India. As a key step toward implementing the road map, the RBI issued a discussion paper in January 2011.

Setting up of WOS by foreign banks: the RBI has released the final guidelines for foreign banks to set up a WOS in India. The key features of the guidelines are listed below:

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

- Banking Laws Amendment Act, 2012: the Banking Laws Amendment Act, 2012 has been enacted to amend the Banking Regulation Act, 1949. The key changes are:
  - Increasing the cap on shareholders’ voting rights in private sector banks from 10% to 26% in a phased manner
  - Empowering RBI to supersede the bank board in the case of any irregularities identified

Over the past couple of years, the banking sector in India has displayed a high level of resiliency in the face of high domestic inflation, INR depreciation and fiscal uncertainty in the US and Europe. In order to stimulate the economy and support the growth of the banking sector, the RBI adopted several policy measures, such as increasing the key monetary policy rates such as repo and reverse repo rate, and tightening provisioning requirements. Amid this economic scenario, the key challenge for the Indian banking system continues in improving their operational efficiency and implementing prudent risk management practices. The RBI is in the process of analyzing proposals for expansion of the banking sector with new entrants and has already invited applications for new banks. Furthermore, as indicated in the Annual Policy Statement of May 2013, the Reserve Bank is preparing a policy discussion paper on banking structure in India, which will be placed in the public domain. The expansion of the banking sector, commensurate with the growth of the economy, will not only enhance competition, but also facilitate financial inclusion.
B.4 Capital markets

The Indian capital markets have made significant progress over the last decade, which spans several dimensions of development such as accessibility, regulatory framework, market infrastructure, transparency, liquidity and the types of instruments available. All these factors have culminated in the emergence of much deeper and resilient primary, as well as secondary capital markets in India. Generally, FIs, NRIs and PIOs are allowed to invest in the primary and secondary capital markets in India through the Portfolio Investment Scheme. Under this scheme, FIIs or NRIs can acquire shares or debentures of Indian companies through stock exchanges in India.

The SEBI is the regulatory authority established under the SEBI Act 1992 in order to protect the interests of the investors in securities, as well as promote the development of the capital market. It involves regulating the business in stock exchanges; supervising the working of stock brokers, share transfer agents, merchant bankers, underwriters, etc; as well as prohibiting unfair trade practices in the securities market.

In a move to encourage and simplify Foreign Portfolio Investment (FPI) regimes, the SEBI has released the list of major recommendations of the Committee\(^{38}\) on rationalization of investment routes and Monitoring of FPI. A new investor class, FPI, will replace FIIs and QFIs. The existing FIIs, their sub-accounts and QFIs are proposed to be merged into FPIs. The recommendations of the Committee seem to be a positive move toward simplifying the foreign investment norms in India. Furthermore, the Committee, from the point of Know Your Customer (KYC), has recommended categorization of FPIs into three categories as per its press release\(^\text{39}\).

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38 Recommendations by K.M. Chandrashekhar Committee.
A significant development has been the coming together of four leading banking and financial services giants to launch the country’s first infrastructure debt fund. The fund will be structured as an NBFC and will have an initial equity share capital of INR3b. The fund is expected to catalyze an alternative pool of capital to finance India’s infrastructure needs.

Regulatory scenario
SEBI was established to achieve the following:

- Regulate and promote the development of the securities market and protect the interest of investors
- Regulate the functioning of capital markets and issue detailed guidelines relating to capital markets, disclosures by public companies and investor protection
- Formulate regulation to govern various intermediaries and investors

The SEBI has proactively introduced measures to improve the integrity of the secondary as well as primary markets through better governance. Additionally, the SEBI has introduced reporting requirements for various capital market participants to enable increased transparency.

Dealings in securities are also governed by the provisions of The Securities Contracts (Regulation) Act, 1956.

Mutual funds

The entry of private sector mutual funds in 1993 has given the Indian retail and corporate investors a wide choice of fund houses. The number of SEBI-registered asset management companies in India stood at 51.\(^{40}\) The quantum of asset under management is INR8,166b as on 31 March 2013.
QFIs

In order to widen the class of investors, attract more foreign funds, reduce market volatility and deepen the Indian capital markets, the GOI has allowed QFIs to directly invest in Indian equity markets and corporate bonds, in addition to allowing them to invest in equity and debt schemes of SEBI-registered mutual funds (subject to prescribed conditions and limits). A QFI denotes a person, who is resident in a country, other than India, that is a member of the Financial Action Task Force (FATF) or belongs to a group that is a member of FATF and is a signatory to the International Organization of Securities Commission’s Multilateral Memorandum of Understanding or a signatory of a bilateral Memorandum of Understanding with SEBI.

FIIS

The flow of funds from Foreign Institutional Investors (FIIs) has given an impetus to the Indian capital markets, and the last union budget contains a series of measures to reduce procedural bottlenecks for FIIs. In addition, the sustained nature of FII investments has reiterated their belief in India’s growth story, thus sending strong positive signals about the prospects of India as an investment destination to the global investment community.

The number of SEBI-registered FIIs and sub-accounts stood at 1,765 and 6,335 respectively at the end of March 2013. Net FII investment in 2012-13 amounted to approximately INR1,400b (US$22.67b) compared with INR937b (US$15.17b) in 2011-12 (source: SEBI).

The Indian regulatory regime has adopted a cautious approach toward allowing foreign institutions to invest in the country. Over the years, the regulation have been liberalized gradually across several dimensions such as investment limits, eligibility criteria and the instruments permitted for FII investments. The latest union budget for FY14 has attempted to ease foreign investment in India from central banks, sovereign wealth funds, university endowments and pension funds by proposing uniform KYC norms.
Of late, infrastructure is one sector where the regulation pertaining to foreign investment have been notably relaxed. While the overall limit remains at US$25b, the RBI has announced rationalization of FII investments in bonds, including government securities, by doing away with various category limits to attract more foreign inflows.

**VCFs**

The visibility of Venture Capital Funds (VCFs) has increased over the last couple of years with several large funds looking actively at investments in India.

The number of SEBI-registered VCFs and Foreign Venture Capital Investors (FVCIs) were 205 and 164, respectively, as of 31 December 2012. Investments by VCFs and FVCIs in venture capital undertakings stood at approximately US$18.376b for the period of April to December 2012.

FVCIs need to have firm commitment from their investors for the latter’s contribution of an amount aggregating to at least US$1m at the time of registration with the SEBI.

The existing VCF Regulation have been repealed on notification of the Alternative Investment Funds (AIF) Regulation. The funds registered as VCF under the VCF Regulation will continue to be regulated by the regulation untill the existing fund or scheme is wound up. Such funds or schemes will not be allowed to launch any new scheme or increase the targeted corpus after the notification of the AIF Regulation.

**AIFs**

On 21 May 2012, the SEBI has notified the SEBI AIF Regulation, 2011. AIFs are segregated into category I, II and III. All AIFs are required mandatorily to seek registration in one of the categories. 47 AIFs have been registered with the SEBI as of April 2013.
Commodities markets

The commodities market is another rapidly growing market in India. It was highly unorganized until 2003, when the first national level commodity derivatives exchange, National Multi-Commodity Exchange of India, was permitted to commence operations. Currently, there are six national and 16 regional commodity exchanges in India.*

The six national exchanges in the country that enable the purchase and sale of commodity are:

- Multi-Commodity Exchange of India Limited
- National Commodities and Derivatives Exchange Limited
- National Multi-Commodity Exchange of India Limited
- Indian Commodity Exchange Limited
- Ace Derivatives and Commodities Exchange Limited
- Universal Commodity Exchange Limited

Indian commodity derivative markets are regulated under the Forward Contracts (Regulation) Act, 1952 (FCRA). The Act proposes a three-tier regulatory structure for the industry, including:

- The GOI, which is the primary regulator
- Forward Markets Commission (FMC), which acts as an intermediary between the GOI and the exchanges
- The exchanges

Key functions of the FMC include providing limits on speculative open positions, placing price limits for all commodities and providing directives for margin requirements.

Foreign investment is permitted in commodity exchanges, stock exchanges, depositories and clearing corporations, and is subject to a composite ceiling of 49%, with a FDI limit of 26% and FII limit of 23%. Previously, the composite ceiling of 49% was under the approval route. On 22 August 2013, the GOI, as per press note no. 6, announced that the FDI up to composite 49% will be allowed under the automatic route.

Derivative markets

The market for exchange-traded derivatives has evolved rapidly in India over the last decade, and the country today boasts of one of the most active derivatives markets across the globe. In fact, the turnover of derivatives trading on the NSE, which increased from US$0.55b in 2000-01 to US$6,306.0 b in 2012-13, has already surpassed that of the equity markets. Index options are the most popular type of derivative instrument and account for the highest share of the total derivatives turnover.

Credit Default Swaps (CDS) for corporate bonds became the latest derivative instrument permitted in India when the guidelines for CDSs issued by the RBI, became effective from 24 October 2011. The RBI has included Export Import Bank (EXIM), National Bank for Agriculture and Rural Development (NABARD), National Housing Bank (NHB) and Small Industries Development Bank of India (SIDBI) as users permitted to participate in the CDS market.
Debt markets

The debt market in India, especially the corporate bond market, has not kept pace with the growth of equity markets in India. Some of the reasons for the slow growth of corporate debt markets in India can be attributed to poor transparency, absence of pricing of spreads against the benchmark yield curve, an inadequate supply of paper from corporate entities, issuance of a large number of government securities and low-risk subordinated debts by banks.

In order to encourage foreign investment in debt markets in India, the GOI has introduced a concessional rate of tax of 5% on interest payments to FIIs and QFIs on investments in government securities and INR-denominated government corporate bonds. The finance ministry has indicated that it intends to encourage increased foreign investment in Indian debt, help develop local debt market and accelerate economic growth.

Industry outlook

In the last decade, there has been a paradigm shift in the Indian capital market. The application of many reforms and developments in the Indian capital market has made it comparable with international capital markets. Now, the market features a developed regulatory mechanism and a modern market infrastructure, with growing market capitalization, market liquidity and mobilization of resources. The emergence of a private corporate debt market is also a good innovation, replacing the banking mode of corporate finance.
B.5 Life sciences

The life sciences industry in India has become a prominent market globally. Currently, it is one of the largest and most developed markets, ranking 4th in terms of volume and 13th in terms of value.\footnote{Confederation of Indian Industry, CII website.} The industry is experiencing rapid growth amid dynamic changing trends — increasing local presence by multinationals through strategic alliances or establishing direct presence, initiatives by the GOI to boost local access and affordability to quality health care and reinforcing regulation for increased transparency and to attract further investments in this sector.

Pharmaceutical formulations and bulk drugs

The Indian pharmaceutical industry is highly fragmented, with the top 10 players accounting for nearly 38% of total sector revenues, which was estimated at US$24.4b in 2012.\footnote{2012 industry value projection calculated at base value US$21.4b as of 2011 at 14% year on year growth 2011 industry value, Invest-India website, http://www.investindia.gov.in/?q=pharmaceuticals-sector, accessed 9 June 2013.} India accounts for nearly 8% of global pharmaceutical production\footnote{India- World Pharmaceuticals Market- Q1 2013, Epsicom, 16 July 2012, via ISI Emerging Markets.}, which makes it the third-largest pharmaceutical manufacturer worldwide\footnote{A brief report on pharmaceutical industry in India, March 2013, CCI website http://www.cci.in/pdfs/surveys-reports/Pharmaceutical-Industry-in-India.pdf, accessed 9 June 2013.}. Furthermore, it accounts for more than 45% of the world’s requirement of bulk drugs\footnote{History, Bulk Drug Manufacturers Association (India) website, http://www.bdmai.org/history.php, accessed 9 June 2013.}.

The presence of a large generic market makes the Indian pharma market price sensitive. Despite this, nearly 18 of the top 20 global pharmaceutical companies have set up their subsidiaries in India. They have also entered marketing arrangements with domestic players to expand the reach of their products.
In 2012, the share of formulations and Active Pharmaceutical Ingredients (APIs) stood at 81:19 compared with 69:31 in FY07. The domestic pharmaceutical market, valued at US$16.8b, grew at 17.5% year on year in 2012. For the same year, total pharmaceutical exports were estimated at US$8b. The market grew at a CAGR of 17.4% between 2007 and 2012.

**Biotechnology**

The Indian biotechnology sector is primarily dominated by domestic players, with only four foreign players featuring in the list of top 20 biotech companies in FY12.

The sector is classified into the bio-pharma, bio-services, bio-agri, bio-informatics and bio-industrial segments. The Indian biotech industry amounted to nearly US$4.3b in FY12, growing at a year on year rate of 23.2%. Bio-pharma is the largest industry segment, accounting for nearly 62% of total revenues, followed by the bio-services (18.3%) and bio-agri (14.9%) segments. Prospects for the biotechnology equipment market in India are seemingly bright.

Exports accounted for a 48% share of the total biotech sector, with bio-pharma (63.1% of the total segment sales) and bio-services (32.8%) accounting for a major share of revenues from exports.

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Contract Research and Manufacturing Services

The Indian Contract Research and Manufacturing Services (CRAMS) market was estimated at US$8.1b in 2012, growing at a CAGR of nearly 49.2% from 2007. With global slowdown in R&D productivity, increasing costs of manufacturing and research, and shrinking pipelines, MNCs are engaging themselves in outsourcing manufacturing and drug discovery to low-cost destinations such as India. India’s cost efficiency, skilled manpower and growing technical capabilities are some of the factors driving the growth of CRAMS in India.

The Indian contract research market has grown at a CAGR of 65.7% between 2007 and 2012 and accounts for 47% of the total Indian CRAMS market; it controls 6% of the global contract research market share.

The contract manufacturing market was valued at US$4.4b in 2012, and grew at a CAGR of 40.5% during 2007 to 2012. With more than 200 plants approved by the United States Food and Drug Administration (USFDA) and the UK Medicines and Healthcare Regulatory Agency, the Indian contract manufacturing represents nearly 5.5% of the total global market share. Additionally, India accounts for 37.4% of a total of 476, of Abbreviated New Drug Applications (ANDAs) approved by the USFDA in 2012.


Medical devices and equipment

The Indian medical devices industry has grown significantly in the past five years. Currently, it ranks among the top 20 in the world. It is the fourth-largest medical device industry in Asia after Japan, China and South Korea. The Indian medical devices industry was valued at US$3.2b in 2012, growing at a CAGR of 13% for 2007 to 2012. However, the size of the industry is still small, as per capita spending was just around US$2 in 2012.

Sales of medical devices in the country have steadily improved as a function of overall health care expenditure. In 2012, medical device sales contributed nearly 4.7% of total health care expenditure in the country. The private sector contributed nearly 75% to health care expenditure in 2012.

Clinical trials

The Indian clinical trials market was estimated at US$663m in 2012 and accounts for 2.1% of the global clinical trial market share. Indian clinical trial players specialize in conducting bio-availability (BA), bio-equivalence (BE) studies and data management.

Of late, the Indian clinical trial market is subjected to increasing competition from countries such as China and Eastern European countries. The number of new trials registered in the country dropped to 262 in 2012 from 500 in 2010. However, with overall well-developed capabilities and strong fundamentals, the market is expected to bounce back.

Regulatory scenario

FDI regulation

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

- FDI, up to 100% and under the automatic route, permitted for greenfield investments in the pharmaceuticals sector
- FDI, up to 100%, permitted for brownfield investments (i.e., investments in existing companies) in the pharmaceuticals sector, with the prior approval of FIPB. Furthermore, the GOI may incorporate conditions for FDI brownfield cases at the time of granting approval

The aforesaid policy has been introduced as an interim measure until the government comes out with a revised policy governing FDI in the pharmaceuticals sector. A number of discussions are taking place; however, no formal announcement has been made yet.

Other regulation

The main regulatory body for the Indian pharmaceutical industry is the Central Drugs Standard Control Organization (CDSCO), which falls under the ambit of Ministry of Health and Family Welfare. The Drug Controller General of India (DCGI) is the controlling body for CDSCO and is responsible for the approval of new drugs and clinical trials, as well as establishment of quality standards. The regulator also monitors State Drug Authorities, which are mainly responsible for granting drug manufacturing and retailing licenses.

Prices for essential drugs are defined under the Drug Price Control Order (DPCO) and are regulated by the GOI through the National Pharmaceutical Pricing Authority (NPPA). Furthermore, the GOI is also proposing to bring certain medical devices within the ambit of the DPCO. The Department of Pharmaceuticals was promulgated on 2 July 2008 under the Ministry of Chemicals and Fertilizers. The department was established with the objective of providing increased focus on development of medicines, R&D, the protection of intellectual property (IP) rights and international commitments related to the pharmaceutical sector, all of which require integrating work with other ministries.
Some of the sector-specific policy updates are outlined below:

Drugs

- Uniform Code of Pharmaceuticals Marketing Practices has been issued by the GOI to check marketing practices of pharmaceutical companies.
- National Pharmaceuticals Pricing Policy draft has been issued by the GOI to ensure availability of essential medicines at reasonable prices; according to the revised draft, the National List of Essential Medicines (NLEM) now includes a total of 348 medicines that will be under price control.
- The Directorate General of Foreign Trade has implemented bar coding on export consignment of pharmaceuticals and drugs for tracing and tracking purposes.
- CDSCO has issued a draft guidance on the requirement of submission of chemical and pharmaceutical, information including stability study data for approval of clinical trials and bio-equivalent studies.
- The GOI has also outlined new guidelines for clinical trial adverse event reporting and compensation.
- The Health Ministry proposes to introduce a new law to regulate the medical device sector. The new law aims to set necessary standards for medical devices alongside strengthening the domestic manufacturing industry.

The GOI has constituted the National Apex Committee for Stem Cell Research and Therapy to review and monitor the stem cell research in the country.
Recent developments and industry outlook

Pharmaceutical formulations and bulk drugs

The overall Indian pharmaceutical market is expected to reach US$36.7b by 2015, growing at a CAGR of 14.3%. The domestic market is expected to undergo consolidation through alliances or mergers and acquisitions until 2016, augmenting domestic demand and production. Increasing affordability for better care, complemented with further penetration of medical care and facilities, increasing prevalence of chronic diseases and increase in the health insurance coverage, will remain key growth drivers for the domestic pharma market.

Pricing remains critical in the Indian market due to the presence of a large generic medicine market. The Government’s recent move to adopt a new pricing policy based on a “market-based pricing model” is pegged at stimulating enhanced transparency and augment competition in the Indian market. However, the new policy will bring nearly 60% of the currently available drugs under price control. This is likely to have an impact on earnings in the near future, but is unlikely to affect longer-term growth prospects for companies operating in India.

The Indian pharmaceutical export is expected to continue to grow at a double-digit growth rate and reach US$16.7b by 2015. Much of its growth will come from the fast-growing generic drug market (developed nations), which will drive near- to mid-term growth in exports, with the US being the largest market for India’s pharmaceutical exports. However, over the long term, growth in exports is expected from emerging markets such as Russia, Brazil and South Africa.

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Biotechnology

The Indian biotech industry is projected to reach US$10b by 2015\(^{65}\). In 2012, a new autonomous body called the National Biotechnology Regulatory Authority was established under the draft Biotechnology Regulatory Authority of India Bill. The GOI has also set up the Biotechnology Industry Research Assistance Council (BIRAC), an autonomous funding body to promote research and innovation capabilities among biotech companies operating in India\(^{66}\).

The sector offers considerable investment opportunity over the mid- to long-term horizon in the area of bioactive therapeutic proteins, medicinal plants, animal biotechnology, seri biotechnology, stem cell biotechnology, biofuels, biopesticides, human genetics and environmental biotechnology. In addition, there is an increasing support from the GOI to fund and to attract potential players\(^{67}\). Key initiatives from the GOI are\(^{68}:\)

- **Biotechnology Regulatory Authority of India (under proposal):** the proposed authority will act as an independent body and legal committee to control the production, research, transport, import and usage of organisms and products of modern biotechnology.
- **Venture fund:** the GOI has set up a US$2.2b venture fund to support drug discovery and research infrastructure development projects.
- **BIRAC:** this council supports innovation and provides infrastructure and services to the Indian biotechnology sector.


Medical devices and equipment

Overall sales of medical devices will increase to 5.1% of total health care expenditure in the country by 2015. The medical devices market in India is expected to offer a competitive environment to both SME companies and foreign multinational entities. MNCs are expected to continue dominating the medical devices industry in India, especially the high-technology product category, due to their scale of operations and extensive service networks. The domestic industry is expected to meet low- to mid-technology product demand.

Furthermore, the development of favorable regulation, along with IP protection in sync with global norms, is expected to enable this industry to effectively benefit from the forthcoming growth opportunity and drive the next phase of industry growth.

Dental products and consumables are expected to grow at CAGRs of 17.4% and 17.1% respectively during the same period. Near- to long-term demand for medical equipment and supplies is expected to come mainly from private sector hospitals and medical centers. Moreover, the GOI proposals to boost health insurance cover from 25% to 75% by 2017 will augment overall market growth, with additional impetus to private players operating in this space.69

The industry is forecasted to reach US$11b by 202324, growing at a CAGR of 11% (2012–23).

Clinical trials

The Indian clinical trial market is expected to reach almost US$1b70 by 2015 and increase its market share to 2.9% globally. Strong fundamentals and increasing transparency will remain key factors influencing the growth, such as the mandatory requirement to register clinical trials with the Clinical Trial Registry — India and country’s increasing compliance with WHO Good Clinical Practice norms are some of the key drivers of the future.

70 Clinical trials market - India, Netscribe Pvt. Limited, April 2013, via ISI Emerging Markets.
B.6 Information technology

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

According to the IT Annual Report 2012-13 issued by the Department of Information Technology, it is estimated that the IT industry’s contribution to India’s GDP in 2012-13 is around 8%.

The IT industry’s revenues for 2012-13 is estimated to aggregate US$108b, with the IT software and services sector (excluding hardware) accounting for more than US$95b of revenues.

The Indian software and services exports (including ITES or business process management) are estimated at US$75.8b in 2012-13, as compared with US$68.8b in 2011-12 – a growth of 10.2%.

Although the IT sector is export driven, its revenues from the domestic market have also been significant – the domestic sector is estimated at INR1,047b in 2012-13 compared with INR918b in 2011-12 – a growth of 14.1%.

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

In the case of the IT industry, FDI norms are quite liberalized. 100% FDI is permitted in India under the automatic route. As part of its trade policies to attract foreign investment in India and to promote exports, the GOI had introduced the SEZ scheme, and provided fiscal and tax incentives to IT units operating out of such SEZs. This policy is proposed to be continued under the proposed DTC, under which IT units operating in an SEZ can continue to avail of a tax holiday, provided they commence operations in such an SEZ on or before 31 March 2014.

Furthermore, with a view to encourage growth of IT SEZs, the GOI has recently waived off the minimum land area requirement to set up an SEZ and reduced the “built-up area” requirements for such IT SEZs. This policy development is expected to give a fillip to employment and growth opportunities in the IT sector, especially in tier-II and tier-III cities.

Recent developments and industry outlook

The ITES has become one of the key sectors for the Indian economy because of its economic impact. Convergence of technologies is also creating opportunities. Cloud, mobility, social media and data analytics present opportunities for the industry to build new solutions, re-architect existing platforms and target new customer segments. Nevertheless, the industry will need to cope with factors such as increasing competition from other low-cost countries, exposure to the US and Europe slowdown, economic uncertainties and changing or restrictive policies in some of the major markets such as the US.
From an IT policy standpoint, the GOI has undertaken various initiatives, with the objective of providing a boost to this sector.

Some of the key initiatives are briefly outlined below:

- The GOI has approved the National Policy on Information Technology (NPIT), which attempts to optimally leverage India’s global edge in information and communication technology to advance national competitiveness in other sectors, particularly those of strategic and economic importance. Among other objectives, NPIT aims to make at least one individual in every household e-literate.

- The GOI has approved the National Policy on Electronics 2012, which aims to develop core competencies in strategic and core infrastructure sectors and create an ecosystem for a globally competitive Electronic System Design and Manufacturing (ESDM) sector in the country.

- The GOI has introduced the Modified Special Incentive Package Scheme in order to promote large-scale manufacturing in the ESDM sector, such as IT hardware, consumer electronics, semiconductor chips and components, etc., by providing subsidies for investments in capital expenditure and reimbursements of countervailing duties or central taxes and duties, etc.

- The GOI has introduced the Electronics Manufacturing Clusters Scheme, which offers financial support that will aid growth of the ESDM sector, help development of entrepreneurial ecosystem, drive innovation and catalyze economic growth by increasing employment opportunities.

- Furthermore, the continued implementation of various government-sponsored projects, e-governance and cyber security initiatives—such as the Global Internet Governance and Advocacy project, State Wide Area Networks, State Data Centers, National Cyber Security Policy 2012, cyber forensics, etc.
The Indian IT sector is the biggest employment generator and has spawned the mushrooming of several ancillary industries such as transportation, real estate, catering, security, housekeeping, etc. Direct employment in the IT services and BPO or ITES segment is estimated to grow by more than 7% to touch 2.96m in FY13, with more than 188,000 jobs being added during the year. Indirect job creation by the sector is estimated at 9.5m.\textsuperscript{71}

To continue its growth path over the past few years and to counter challenges of emerging alternative outsourcing destinations, the Indian IT industry will need to focus on shifting from services to IP-led growth models, offer differentiated products and services to customers and showcase value beyond cost, expand to new markets and continue to make strategic investments.
B.7 Insurance

The Indian insurance industry has undergone a major transformation over the past decade and has evolved into a considerably competitive market. The insurance industry penetration, which increased consistently until 2009-10, has slipped since 2010-11 on account of slowdown in life insurance premiums compared with the growth rate of the Indian economy. The slowdown in the new life premium growth segment was mainly attributable to tightening of regulation governing unit-linked insurance products.

Life insurance penetration had consistently gone up from 2.15% in 2001 to 4.60% in 2009, before declining to 4.40% in 2010 and further to 3.40% in 2011. However, the penetration of the non-life insurance sector in the country has remained near constant in the range of 0.55%-0.75% over the last 10 years (0.71% in 2010 and 0.70% in 2011).

India has witnessed a consistent increase in insurance density every year since the sector was opened up for private competition in 2000. However, in 2011, for the first time, there was a decline in insurance density. The life insurance density in India has gone up from US$9.1 in 2001 to US$49 in 2011, though it reached the peak of US$55.7 in 2010. The insurance density of the non-life insurance sector reached the peak of US$10 in 2011 from its level of US$2.4 in 2001.72

For its size and potential, India has an abysmally low level of insurance penetration and density. The levels of protection (insurance sum assured as a percent age of GDP) for India is only around 55% while it ranges between 150% and 250% in some emerging and mature economies.
Regulatory scenario

The IRDA is the regulator for the insurance and reinsurance business in India. The IRDA Act of 2000 addresses issues related to ownership, solvency, investment portfolio construction, commission structures, reporting formats and accounting standards.

The minimum paid-up equity capital requirement for life and general insurance has been set at INR1b (US$16.19m approximately) and, for reinsurance business it is INR2b (US$32.39m approximately). The life insurance businesses, is capital intensive, and companies require regular capital infusion for funding expected losses and meeting solvency requirements.

Recent developments and industry outlook

There have been some key policy initiatives impacting the insurance and pension funds sector, which have been finalized in consultation with the IRDA. These include empowering insurance companies to open branches in tier II cities and below without prior approval of the IRDA, the KYC of banks to be sufficient to acquire insurance policies, the introduction of the Insurance Laws (Amendment) Bill, 2008 and the Pension Fund Regulatory and Development Authority Bill, 2011. The existing framework of FDI provides for a 26% limit on foreign capital, and there is a proposal for a hike to 49% pending before the parliament.

Some of the key amendments proposed in the Insurance Laws (Amendment) Bill, 2008 include the following:

- Increasing FDI limits in the insurance sector from 26% to 49%
- Introducing “health insurance business” as a separate category of insurance (the other categories being life and general insurance); minimum paid-up capital of INR0.5b (US$8.09m approximately) prescribed for standalone health insurance companies
- Allowing foreign reinsurance companies to set up their branches in India; minimum net owned funds of INR50b (approximately US$809m)
Various other regulatory changes that have come up in the last few years are as follows:

- To provide a framework for amalgamation and consolidation in the insurance industry: the IRDA has notified the Scheme of Amalgamation and Transfer of General Insurance Business Regulation. The Scheme provides a two-stage approval of the IRDA: an in-principal approval and a final approval (which is to be obtained after the Scheme has been examined by the other regulators including the High Court and Income Tax Appellate Tribunal). Recently, the IRDA has issued the IRDA (Scheme of Amalgamation and Transfer of Life Insurance Business) Regulation, 2013 which provide for a similar two-stage approval of the IRDA for amalgamation in the life insurance industry.

- To provide a framework for divestment to public by the promoters in the case of life insurance companies who have completed 10 years: the IRDA has notified the Issuance of Capital by Life Insurance Companies Regulation governing raising capital and divestment of shares through public offer for sale by promoters of Indian life insurance companies who have completed 10 years of operations. These regulations require a life insurance company to seek IRDA’s approval before approaching the SEBI for public issue of shares.

- Mandatory reinsurance with domestic reinsurers: the IRDA (Life Insurance- Reinsurance) Regulation, 2013 mandates that a percentage of the sum assured as prescribed by the IRDA (not to exceed 30% of the sum assured) will have to be reinsured with the domestic reinsurers.73 Mandatory cession requirements already existed for general insurance companies under the IRDA (General Insurance Reinsurance) Regulations, 2000. These regulations have been replaced with the IRDA (General Insurance Reinsurance) Regulations, 2013, which provide that the all general insurance companies shall cede a prescribed percentage of the sum assured (not to exceed 30%) with domestic reinsurers.

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73 Currently, the General Insurance Corporation Re is the sole reinsurer.
Opening of foreign insurance company or branch outside India: the IRDA has recently notified guidelines for the opening of a foreign insurance company (including branch office) outside India by an Indian insurance company registered with the IRDA. The foreign company or branch could be set up to undertake either life insurance, general insurance (including health insurance) or reinsurance business, depending upon the business for which the IRDA has granted a license to the Indian insurance company.

IPO by general insurance companies: the IRDA (Issuance of Capital by General Insurance Companies) Regulation, 2013 provides the norms for initial public issue (IPO) by general insurers. According to these regulations, only general insurance companies that have been in operation for 10 years, will be entitled to bring out an IPO.

To make the Unit Linked Insurance Plans (ULIPs) a long-term protection contract: the IRDA made several structural changes in ULIPs, such as increasing the lock-in period, doing away with excesses, etc. These measures changed the overall landscape for private insurers, which had around 80% of their product portfolio consisting of ULIPs. This reduced the attractiveness of ULIPs for insurers, distributors and customers to some extent.

To increase persistency and bring discipline among agents: the IRDA has issued strict licence-renewal norms, such as the minimum business requirements.
To improve claims ratio and solvency margin: the IRDA increased the third-party motor premium from April 2011.

To promote healthy competition and improve service standards: health insurance portability came into force from 1 October 2011. This allows the consumers to shift their insurance companies without forfeiting the benefits.

To safeguard policyholder’s interest and improve customer satisfaction: outsourcing of non-core activities was allowed by the IRDA.

The insurance sector in India has seen a considerable amount of activity and growth during the last decade. Significant potential for providing insurance services has attracted many foreign players, in addition to a number of domestic players, to enter the market. Furthermore, several reforms and policy measures, especially during the last decade, have provided a conducive environment for the insurance companies to flourish.
B.8 Media and entertainment

India’s vibrant media and entertainment (M&E) industry provides attractive growth opportunities for global corporations with 650 television (TV) channels\(^\text{74}\), 155m TV households\(^\text{74}\), more than 86,000 newspapers\(^\text{75}\) and 1,000 films produced annually. The industry is estimated to achieve a growth rate of 11.8% in 2013 to reach INR917bn and is projected to reach INR1,661bn by 2017, at a CAGR of 15.2\%\(^\text{76}\).

Regulatory scenario

The Ministry of Information and Broadcasting is responsible for laws, rules and regulation related to information and broadcasting, as well as press and films. The TRAI is the regulator for broadcasting and cable services.

The Cinematograph Act, 1952 and the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 regulate the functioning of films as well as national TV and radio. Cinema exhibition rules and entertainment tax regulation are state-specific, and almost all states have enacted laws on these.

In March 2013, the TRAI issued regulations on Standards of quality service (duration of advertisements in Television Channels), which requires the broadcaster to restrict the duration of advertisements on channels to a maximum of 12 minutes in any given hour. The implementation of these regulation have been put on hold until November 2013 by the Telecom Dispute Settlement and Appellate Tribunal.

Recently, the TRAI has issued The Telecommunications (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulation and The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff order, dealing with packaging and pricing of the channel offerings.

74 Consultation Paper on Guidelines or Accreditation Mechanism for Television Rating Agencies in India By TRAI.

75 Registrar of Newspapers website http://rni.nic.in/, accessed 3 June 2013.

Doing business in India

The TRAI has released a second consultation paper on “Issues Relating to Media Ownership” and has called for views from stakeholders on restrictions on ownership of media, including on powers to the GOI to prevent any entity from entering the media sector in public interest.

Additionally, the TRAI has released a consultation paper on the extension of a DTH license on expiry of the 10-year period. The key issues discussed in the consultation paper pertain to entry fee, bank guarantee and license fee.

The Union Ministry of Home Affairs has introduced the requirement of having a rule that requires television channels to get the credentials of their directors reverified every three years. Also, they are required to obtain a fresh security clearance from the Union Ministry of Home Affairs each time a company launches a new channel.

The National Sports Development Bill, 2013 has been posted on the website of Youth and Sports Ministry for comments of stakeholders. The draft Bill provides for reforms in management and governance of sports.

The Ministry of Information and Broadcasting is in the process of introducing single-window clearance for foreign filmmakers for shooting films in India. This is intended to promote India as a global film-shooting destination.

Three prominent industry bodies—the Indian Broadcasting Foundation, the Indian Society of Advertisers and the Advertising Agencies Association of India—from the field of media and advertising have come together to form the Broadcast Audience Research Council, an industry body for TV audience measurement.
## FDI and FII investment by segments

<table>
<thead>
<tr>
<th>Segment</th>
<th>Sectoral limits (%)</th>
<th>Route</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Broadcasting</strong>&lt;sup&gt;77&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Teleports (setting up of up-linking HUBs or teleports)</td>
<td>74</td>
<td>Automatic up to 49% Government approval beyond 49% and up to 74%</td>
</tr>
<tr>
<td>▪ DTH</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Cable network (multisystems operators operating at national, state or district level and undertaking upgradation of networks toward digitization and addressability)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Mobile TV</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Headend-in-the-sky</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cable network (other multisystems operators not undertaking upgradation of networks toward digitization, addressability and local cable operators)</td>
<td>49</td>
<td>Automatic</td>
</tr>
<tr>
<td>FM radio, up linking news and current affairs channel</td>
<td>26</td>
<td>Government</td>
</tr>
<tr>
<td>Up-linking non-news and current affairs channel</td>
<td>100</td>
<td>Government</td>
</tr>
<tr>
<td><strong>Print media</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Publishing of newspapers and periodicals dealing with news and current affairs&lt;sup&gt;78&lt;/sup&gt;</td>
<td>26</td>
<td>Government</td>
</tr>
<tr>
<td>Publication of Indian editions of foreign magazines dealing with news and current affairs&lt;sup&gt;79&lt;/sup&gt;</td>
<td>26</td>
<td>Government</td>
</tr>
<tr>
<td>Publication of scientific, technical or specialty magazines, journals and periodicals</td>
<td>100</td>
<td>Government</td>
</tr>
<tr>
<td>Publication of facsimile editions of foreign newspapers</td>
<td>100</td>
<td>Government</td>
</tr>
<tr>
<td><strong>Others</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertising, film, music and live entertainment</td>
<td>100</td>
<td>Automatic</td>
</tr>
</tbody>
</table>

Source: Ministry of Commerce and Industry — Department of Industrial Policy and Promotion

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<sup>77</sup> Foreign investment includes FDI, FII, NRI, FCCB, ADR, GDR and convertible preference shares.

<sup>78</sup> Foreign investment include FDI, NRI, PIO and FII.
Recent developments and industry outlook

- TV – the television broadcasting industry is likely to benefit by increasing FDI limit in the sector to 74% from 49%. The Ministry of Information and Broadcasting has notified the Cable Television Networks Rules, 2012, paving the way for digitization of the sector. These rules provide the framework based on which digitized cable networks will provide services. Digitalization is expected to boost the growth in the television sector.

- Print — newspapers account for 46% of all advertising spend in India, the highest among any medium. The print players are in the process of getting their digital strategy in place to be ready for the opportunity being presented by new content and digital delivery formats.

- Film – the Indian film industry celebrated the centennial of Indian cinema in 2012 and reached revenues of around INR 11b. Indian film companies are increasingly working at coproduction deals to scale up their operations. The use of digital media to generate new ancillary revenues and to promote films through direct-to-consumer engagement is also on the rise. Digital distribution of films has reduced costs, increased scale and reduced piracy. On the financing side, producers are able to leverage organized sources of financing such as banks loans, film funds and crowd funding.

- The Ministry of Information and Broadcasting and the Ministry of Tourism have signed a memorandum of understanding to support film tourism in India. The Ministry of Tourism will provide budgetary support for identified film festivals, as well as single-window clearance for film shooting permission. To encourage industry-level cooperation, share creative talent and support the vibrant film industry, India has entered into coproduction agreements with Brazil, France, Germany, Italy, New Zealand, the UK and, recently, with Poland and Spain.
Radio – Phase III of FM radio licensing promises growth opportunities for the Indian FM radio industry, since it covers 294 cities and 839 licenses. The FM radio sector is expected to grow to INR23b, at a CAGR of 18% within three years of Phase III being rolled out. Phase III of radio licensing is expected to be completed by 31 March 2014.

Sports – after successfully hosting the Cricket World Cup 2011, the Commonwealth Games 2010, the Formula One race, the 2013 Asian Athletics Championship and the Indian Premier League (T20), the notion of India being a single-sport country has changed. This momentum, combined with a young population and a rising tendency to spend on entertainment, has made way for other sports in the pipeline, such as the World Superbike series. Large private groups have entered long-term agreements to develop sports other than cricket. The sports industry is also spurring the growth of ancillary businesses such as online ticketing and sports and talent management.

The recent policy measures such as digitalization, the auction of Phase III licensing for radio segments and the increase in FDI by the GOI is likely to boost growth of the M&E industry. The rapid rise of new technologies, increase in consumption of digital content and high penetration in tier-II and tier-III cities is expected to further drive the growth in the M&E industry.

India has a diverse content market, since a majority of the India’s urban consumption comes from non-metro cities (tier-II and tier-III towns). These regional markets are significant “markets within a market,” and provide global M&E companies with a variety of opportunities to deliver localized content.

With this view, there is a likelihood of M&E players scaling up through consolidation or diversification across the value chain.
B.9 Mining and metals

The mining sector is an important segment of the Indian economy and, along with the quarrying sector, contributes more than 2% to the country’s economy. In India, 80% of the mining job is around coal and the rest of the cluster is divided into gold, copper, lead, bauxite, zinc and uranium.

Of the 91 major minerals produced in the country, there are four fuel minerals, 11 metallic and 52 non-metallic minerals, and 24 minor minerals. India ranks 1st in production of Mica, 3rd in the production of coal, lignite and chromites, 4th in iron ore production, 6th in bauxite and manganese ore, 10th in global aluminium production and 11th when it comes to crude steel production.

The primary drivers of the sector over the last year have been as table below:

<table>
<thead>
<tr>
<th>Primary driver</th>
<th>Description</th>
<th>Impact potential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost</td>
<td>Increased price of raw material is forcing the producers to optimize the operating expenditures. A majority of the big and medium-sized players are looking at enterprise-wide cost-reduction initiatives in areas of logistics, specific consumables and loss due to non-prime generation.</td>
<td>High</td>
</tr>
<tr>
<td>Capacity maximization</td>
<td>With cost being the driving element to margins, even high-performing units are now striving to maximize their capacities in order to optimize the cost of production by focusing on breakdown reduction, rework reduction, supplementing bottlenecks, etc.</td>
<td>High</td>
</tr>
<tr>
<td>Customer and markets</td>
<td>Increased competition in terms of increased capacities, reduced prices, better competing technologies, customization in specifications and quality of products has led companies to relook at their customer orientation. Companies have been innovating on demand generation strategies, account management frameworks and aligning organization structure to achieve increased customer satisfaction.</td>
<td>High</td>
</tr>
</tbody>
</table>
The Indian Bureau prepares an inventory of mineral deposits and updates every five years. Based on the latest report of the 91 minerals, India is self-sufficient in almost 36 minerals, but deficient in others.

**Regulatory scenario**

The Indian metals and mining sector has been reeling under a toxic mix of high borrowing costs and tough policies on the part of the GOI. Mining projects across the country have stalled because of regulatory, environmental and land acquisition issues. On the surface, the top risks do not look all that different from last year, but below the surface, there has been an absolute shift that has made them significantly different. The risks facing the sector have become more complex over the past 12 months due to the fast-changing investment and operational environment. The metals and mining sector is currently facing stress due to issues such as availability of raw materials, environment clearances, land acquisition and infrastructure bottlenecks. In its annual report for FY12 fiscal, the RBI stated that the Ministry of Coal pointed out that a shortage in coal has resulted in a significant increase in coal imports and increased dependence on imports, and elevated international prices of coal have the potential to impact the key macro indicators such as inflation, growth, fiscal deficit and current account deficit.  

The National Mineral Policy, drafted in 2008, states that the private sector will be the prime source of investment in the reconnaissance and exploration. However, bodies such as the Mineral Exploration Corporation of India, the Geological Survey of India, the Central Mining Planning and Design Institute and the State Department of Mining and Geology have populated the exploration landscape in the country.

The other regulatory issues are pertaining to land acquisition, which is significantly under the threat of growing naxal activities and tribal concerns. The GOI, based on the recent issues with the coal-allocation dispute, has decided to formulate a comprehensive tracking mechanism through Lokayuktas and strengthening regulatory mechanisms, scrutiny and rehaul of environment impact assessment studies, and criminal prosecution of erring mining outfits.

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On 30 September 2011, the cabinet approved the Draft Mines and Minerals (Development and Regulation) Bill 2011 to consolidate and amend the law relating to the scientific development and regulation of mines and minerals under the control of the Union.

- The Bill provides for two methods of granting a mineral concession competitive bidding where mineralization is established, and first-come-first-served otherwise.
- A District Mineral Fund will be established in each district where there are mining operations to make payments to affected persons.
- The Bill permits the allocation of mineral concessions in tribal areas to non-tribal areas. There are two conflicting Supreme Court judgments on the legality of such a provision.
- The Bill mandates the issue of a non-transferable share to affected persons. The Cos Act does not permit the issuance of non-transferable shares.
- The Bill does not clearly define some terms, such as “High technology reconnaissance-cum-exploration license.”

The Central Empowered Committee (CEC) had categorized the mines into three categories — A, B and C. The mines in which there were the least or no irregularities were categorized as A, and those with maximum irregularities were placed in category C. The Supreme Court ordered the closure of 72 mining leases in category C. And out of the 49 mining leases in category B and 45 mining leases in category A, the Supreme Court has allowed resumption of mining in 18 mines in category A. If the CEC appointed by the Supreme Court accept the request for the reclassification of mines, a few more mines in category A are at stake to go down in category C - thereby widening the demand-supply mismatch gap.81

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FDI

The GOI allows 100% FDI under the automatic route for the mining and exploration of metal and non-metal ores, including diamond, gold, silver and precious ores, but excluding titanium-bearing minerals and its ores, subject to the Mines and Minerals (Development and Regulation) Act, 1957.

It also permits 100% FDI under the automatic route for captive consumption by power projects, iron and steel and cement units, and other eligible activities permitted under and subject to the provisions of the Coal Mines (Nationalization) Act, 1973.

Recent developments and industry outlook

The outlook for doing business in India is not very different from the scenario globally. As organizations are facing the heat of increased competition and global slowdown in the downstream consumption, factors such as cost, throughput and customer have become drivers of maintaining a stable bottom and top line. The major concern for metal and mining companies has been inflation in cost. The cost inflation is governed by factors such as energy prices, availability of desired grades of raw material, fluctuation in forex, shortage of labor and increased taxes.
Both the ferrous and the non-ferrous segments are challenged by the bottlenecks such as delays in grants and clearances, and lack of adaptability to the changing technology.\(^{82}\) In the non-ferrous segment, over the past 12 months, demand for metals such as lead and nickel has surpassed the supply figures,\(^{83}\) and thus has been a concern for the primary domestic consumers. There was a moderate growth in the aluminium consumption levels in the country; however, the prices of aluminium saw sharp upturns and declines throughout the year.

India saw significant shortfall in the availability of bauxite in 3Q12; this had a significant impact on the domestic aluminium industries. Although the figures of April to October 2012 will suggest that there was a significant jump in the bauxite mining (~35% year on year), this could well be because of the increased export to China during the aforesaid period. India’s refined copper production has increased at a CAGR of 7.9% since 2000 and stood at 7.05 lakh tons in 2012; however, according to the International Copper Study Group, India’s per capita consumption of copper is still significantly lower than China’s average of 5.8kgs. Hence, there is a huge scope for further growth.

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B.10 Oil and gas

India is the world’s 4th largest consumer of crude oil and natural gas\(^{84}\). Oil and gas currently accounts for 38.9% of India’s primary commercial energy consumption, and this share is projected to increase marginally over the next two decades.\(^{85}\) The estimated consumption of crude oil has increased from 18.38MTs\(^{86}\) during 1970-71 to 211.42MTs during 2011-12, at a CAGR of 5.99%.\(^{87}\) Crude oil production, on the other hand, is estimated to be merely 41.16MTs in 2016-17.\(^{88}\)

During the last decade, India’s oil and gas consumption has been rising, in line with the growth in GDP. However, domestic oil production has been unable to keep pace with the rising demand, especially from the power, fertilizer and transport sectors. As a result, the country’s dependence on imported oil is also rising. India’s natural gas market is characterized by a supply deficit, primarily due to low domestic production and inadequate transmission and distribution infrastructure. Demand for natural gas far exceeds domestic supply, resulting in a deficit and increased reliance on imported Liquefied Natural Gas (LNG). Demand for natural gas in India was 179mmcmd\(^{89}\) during 2010-11, and it is projected to reach 473mmcmd in 2016-17.\(^{90}\) Meanwhile, domestic supply is projected to be 136.2mmcmd in 2016-17. The estimated reserves of crude oil and natural gas in India, as on 31 March 2012, stood at 759.59m tons and 1330.26b cubic meters, respectively.\(^{91}\)

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\(^{86}\) MTs = million tons.


\(^{88}\) Basis Statistics on Indian Petroleum and Natural Gas Statistics, 2011-12, GOI, Ministry of Petroleum and Natural Gas.

\(^{89}\) mmcmd = million metric standard cubic meter per day.

\(^{90}\) Basis Statistics on Indian Petroleum and Natural Gas Statistics, 2011-12, GOI, Ministry of Petroleum and Natural Gas.

Although more than 70% of its crude oil requirement and part of the petroleum products demand is met from imports, India has developed surplus refining capacity over the years to produce different petroleum products. The country is a net exporter of petroleum products, with net exports of 45.82MT during FY12.

The Indian oil and gas industry has been traditionally dominated by national oil companies. Private companies such as Reliance Industries Limited, Essar Oil Limited, Hindustan Mittal Energy Limited and Gujarat Gas Corporation Limited have emerged as prominent players over the past decade. Foreign players operating in the Indian oil and gas sector include BP Plc, Cairn Energy and Royal Dutch Shell.

Regulatory scenario

The industry is under the administrative ambit of the MoPNG. A FDI of up to 100% under the automatic route is permitted in all activities, except in the case of refineries owned by national oil companies, in which up to 49% FDI is permitted under the automatic route (the requirement of obtaining prior approval from FIBP was removed in August 2013).

The Petroleum and Natural Gas Regulatory Board has been constituted as an independent regulator for the midstream and downstream segments of the industry. In the upstream segment, the Directorate General of Hydrocarbons continues to function as a quasi-regulator under the aegis of the MoPNG.


Recent developments and industry outlook

In the upstream segment, the NELP introduced in 199894 has given a boost to private investment and an added impetus to exploration and production (E&P) activity. Production sharing contracts for 247 blocks were signed during the first nine rounds of NELP.95 In parallel, a Coal Bed Methane (CBM) policy was launched. To date, 33 CBM blocks have been awarded under four rounds of bidding.96 However, total CBM production in 2012-13 stands at approximately 0.32mmscmd, as against the production of 7.4mmscmd expected by 2013-14.97

The DGH has carved out a 0.27sq km area for exploration in the 10th round of NELP. Under this, India is expected to auction up to 68 blocks in 201398. This round is likely to be held on new terms, where a bidder shall be asked to quote the amount of oil or gas output that it is willing to offer to the GOI from the first day of production.99

The GOI has expressed the need to explore unconventional sources such as CBM, shale gas and gas hydrates in view of the significant demand-supply gap. In this direction, it issued a draft shale gas and oil policy for public comments in August 2012. In September 2013, the Government allowed national oil companies to apply shale gas and oil rights in their existing onland acreages. It is expected that, at a later (unspecified) date, the Government will permit other state-backed and private companies into shale gas exploration.

There are two gas pricing regimes in India – one for gas under Administered Price Mechanism (APM) and another for free-market gas or non-APM gas. Currently, the APM price is US$4.2 per mmbtu.\textsuperscript{100} In June 2013, the Cabinet Committee on Economic Affairs (CCEA) approved the Natural Gas Pricing Guidelines 2013, which provides the pricing formula, to be applied on quarterly basis, for domestically produced gas, applicable from April 2014 for five years.\textsuperscript{101} The new pricing formula is based on the average of two prices – the estimated netback price of imported LNG at the wellhead of exporting countries and an average of the prices prevailing at the US’s Henry Hub, the UK’s National Balancing Point and Japan’s customs cleared on a netback basis. After its implementation, domestic gas prices are expected to increase to US$8.4 per mmbtu.\textsuperscript{102} However, this pricing formula will not be applicable in cases where the price or pricing formula is contractually agreed on.

India expects INR3.90t (US$63.16b) to be invested in its oil and gas sector from April 2012 to March 2017 in exploration, production, refining, marketing, storage, petrochemicals and related activities, to increase the availability of petroleum and petroleum products.\textsuperscript{103}

\begin{itemize}
\item \textsuperscript{100} mmbtu = million metric british thermal unit.
\item \textsuperscript{101} Fixation of price of domestic natural gas according to Rangarajan Committee recommendations on Production Sharing Contract (PSC) mechanism in petroleum industry, http://pib.nic.in/newsite/erelease.aspx, accessed on 28 June 2013.
\item \textsuperscript{103} http://online.wsj.com/article/SB100014240529702044449804577067804114568054.html, accessed on 13 June 2013.
\end{itemize}
B.11 Ports

Overview

India has 13 major ports and approximately 200 non-major ports, accounting for 95% of the country’s total trade in terms of volume and approximately 70% in terms of value. During FY13, major and non-major ports in India handled a total cargo throughput of 933.66 MT. Major ports accounted for approximately 58%\(^{104}\) of the total cargo traffic, while the remaining traffic was handled by non-major ports. Major ports are currently operating at ~73% \(^{105}\) utilization.

Cargo traffic at Indian ports has increased at a CAGR of 5.7% from 722.9 tonnes in FY08 to 933.66 tonnes in FY13.

![Total cargo traffic (in million tonnes)](chart)

Source: Indian Ports Association Magazine, September 2013

Regulatory scenario

In India, ports are under the administration of the concurrent list of the Indian constitution. The major ports are governed by the GOI, while non-major ports are administered by state governments. Some of the key legislations formulated to govern Indian ports include the Major Port Trusts Act, 1963, the Tariff Authority for Major Ports and the Major Ports Regulatory Authority Act, 2009.

FDI of up to 100% is permissible in Indian ports under the automatic route.

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104 Source: Indian Ports Association Magazine – April 2013.
105 Source: Indian Ports Association Magazine – April 2013.
Recent developments and industry outlook

In the past few years, the GOI has taken several initiatives to increase its investments, especially private ones, to develop new ports, augment existing facilities, mechanize ports, and improve connectivity and logistics to meet the challenges emerging from the increasing growth in trade. It has also recognized the importance of privatization to heighten competition in the ports sector, to increase productivity and efficiency in the segment.

In January 2011, the Ministry of Shipping introduced its perspective plan detailing the development for the port sector for the next 10 years. A total of 352 projects have been identified for implementation under the Maritime Agenda 2010–20. In the case of major ports, the GOI plans to invest US$20b for an incremental capacity of 767m tons. Out of this, the private sector is expected to contribute US$13b (almost ~67%), and the rest will be funded by the Central Government. In the case of non-major ports, the GOI plans to invest US$31b for an incremental capacity of 1,294m tonnes. Out of this, the private sector is expected to contribute US$29b (96% of the fund requirements), while the rest will be provided by the state governments.

Another focus area for the GOI has been the development of inland container depots and container freight stations to facilitate cargo distribution at Indian ports. Container traffic at major ports has increased at a CAGR of 2.8% between FY08 (6.7m twenty-foot equivalent units (TEUs)) and FY13 (7.7m TEUs). According to the Maritime Agenda 2010–20, the container traffic at major ports is expected to increase to 22 m TEUs by 2020.

According to the estimates of the Planning Commission, investment in the port sector during the Twelfth Five Year Plan (2012–17) is expected to be approximately US$36b, of which a substantial portion is expected to be contributed by the private sector.106

B.12 Power (including cleantech) and utilities

India’s power generation capacity, as on 30 September 2013, is estimated at around 228.72 Giga Watt (GW), while the private sector’s contribution just exceeds 31.88% of the installed capacity. Coal, gas and diesel fuel-based thermal power plants form a major portion (i.e., 68.19%) of the installed capacity, accounting for nearly 155.968GW of the total installed capacity in the country. The share of renewable energy in installed capacity reduced from 19.1% in June 2012 to around 17.4% in September 2013.

The total quantum of power generated in the country has increased from 876.888 b units (BU) in FY12 to 911.652 BU in FY 2012-13, growing at the rate of 3.965% on a year-on-year basis. However, the sector is still grappling with several issues, largely related to fuel availability (especially coal), which has the potential to slow down progress. At the end of FY13, the peak electricity demand met was 123.294 GW, resulting in a “peak deficit” of 9%, while the electric energy availability was at 911.652 BU, which has resulted in an energy deficit of 8.7%.


Regulatory scenario

Power is valuable, as well as an essential commodity, for a developing economy such as India. This has led to a surge in the country’s demand for power. The country’s vision is to provide 24/7 quality and affordable power to all.

The regulatory landscape of the Indian power sector has evolved significantly. There is a sound and progressive legislative framework in the form of the Electricity Act 2003, which was amended in 2007. The Electricity Act is based on “open access,” which refers to providing buyers an option to select the source of electricity and giving them the right to the transmission and distribution system for power transfer, which is a key ingredient for a competitive power market. The follow-on policies, among others, are the National Electricity Policy 2005, which provides guidelines for accelerated development of the electricity sector, and the National Tariff Policy 2006, which assures electricity to consumers at reasonable and competitive prices.

The power industry operates under the regulatory control of the MoP. Governing bodies for the power sector consists of the central electricity regulatory commission at the national level, 25 state electricity regulatory commissions at state level and the Joint Electricity Regulatory Commission for all union territories and for the states of Manipur and Mizoram. The governing bodies have been established to determine the tariff for the generation and supply of electricity, regulate electricity purchase and the procurement process, facilitate interstate transmissions, etc.

FDI of up to 100% is permissible in the power segments (excluding nuclear power and atomic energy). Foreign investment of up to 49% is permissible under the automatic route in power exchanges, with composite limits of 26% of FDI and 23% of FIIs. On 22 August 2013, the GOI, through a press note, announced that FDI of up to 49% is allowed under the automatic route, instead of the previous approval route.

In order to accelerate capacity addition and meet persistent supply shortages, the MoP launched initiatives for the development of coal-based, super-critical, ultra-mega power projects (UMPPs) of about 4,000MW capacity each. Four UMPPs have already been transferred to identified developers and are at different stages of implementation.
The Ministry of New and Renewable Energy (MNRE) released a draft policy in December 2012 as Phase II of the Jawaharlal Nehru National Solar Mission (JNNSM), which envisages 9GW of power projects during 2013–2017. The draft policy attempts to address one of the key issues faced by the solar power segment in India — raising affordable finance for projects — by proposing a new financing mechanism. It is expected that, while JNNSM Phase I proved to be the icebreaker for harnessing the solar power potential of India, Phase II will take the segment’s growth to new heights.

From a renewable energy perspective, wind is by far the largest renewable energy segment in India. Incentives such as preferential tariffs, accelerated depreciation and generation-based incentives, along with renewable purchase obligations, are in place to support this segment.

Recent developments and industry outlook

With effect from 1 March 2013, the basic customs duty on steam coal was increased from 0% to 2% and countervailing duty was increased from 1% to 2%. Furthermore, the export promotion capital goods scheme has been amended to restrict import of capital goods for power plants, even if electricity generated from the plant is exported or supplied as a deemed export. However, in order to grant relief to the power project developers from furnishing Fixed Deposit Receipts (FDR) of an amount equivalent to the duty on the equipment for getting tax relief on imports, the MoP has asked the MoF to allow use of bank guarantees, in addition to the FDR.

During the Twelfth Five Year Plan period, transmission network development for hydropower projects in the northeastern states has been given priority, as the region does not have adequate transmission infrastructure to evacuate power from hydro projects.

The country’s power generation capacity, which currently stands at over 200GW, has grown at 8.6% over the past five years. The Planning Commission has estimated a generation capacity addition of 88,537MW for the Twelfth Five Year Plan period. Of this, the private sector would contribute around 53% while the balance would be contributed by the public sector. Though the rate of capacity addition has increased, with projects aggregating over 54,000MW being commissioned during the Eleventh Plan, there has been a wide demand-supply gap.
There is an overall shortage of power in the country, both in terms of energy deficit and peak shortage. The Twelfth Plan aims to add 88GW. Delivery of this additional capacity would critically depend on resolving fuel availability problems, especially when about half of the generated capacity is expected to come from the private sector. Private developers may not be able to finance the projects if coal linkages are not resolved and there delays in the finalization of fuel supply agreements.

The Cabinet Committee on Economic Affairs (CCEA) has approved the scheme of Financial Restructuring of State Distribution Companies (discoms) proposed by the GOI, which is aimed at increasing the operational turnaround of discoms through financial restructuring, and it puts reasonable covenants in place for meeting this objective.

The GOI is considering easing certain environmental norms for power projects by delinking environmental and forest approvals for projects where forest land is less than half of the total requirement.

Fuel remains a major issue. Also, inadequate transmission facilities, grid reliability and discipline issues need immediate attention. However, progress has been made since grid failure in July 2012, to make the transmission grid more secure and reliable.

The actual achievement in increasing the generation capacity would depend on factors such as the resolution of coal and gas supply issues and harnessing of the hydro potential. Furthermore, the power trading market has registered significant growth, both in terms of volume and participation.
B.13 Real estate

The global financial crisis brought about an economic slowdown worldwide. To cope with this, the Indian economy responded strongly to the requirements of fiscal and monetary stimulus, and registered a strong growth of 8.6% to 9.3% in FY10 and FY11, respectively. However, the Indian economy has also witnessed a relative slowdown in FY12 and FY13, with GDP growth of 6.2% and 5.0%, respectively. Despite the slowdown, over the medium to long term, the fundamentals fueling the growth are expected to be intact, and the economy is expected to consistently outpace the global economy.

The real estate sector is a key contributor to India’s GDP, and most of the factors underpinning economic development have a direct impact on the growth of the sector. The share of real estate (including ownership of dwellings and business services) in GDP was 10.8% in FY12. With GDP expected to grow at approximately 5.55% during FY14, as estimated by the RBI, the real estate sector is expected to report measured growth in the next year.

Recently, Indian developers have been increasingly turning to private equity funds and NBFCs to finance their land acquisition requirements. India is attracting the highest number of unlisted, closed-end funds that focus on a single country, making it one of the preferred choices among emerging markets worldwide. Furthermore, the GOI has been increasingly liberalizing FDI policies to encourage inflow. From April to November FY2012–13, FDI inflows in the real estate sector were approximately US$15.85b.
In FY12, FDI inflows into the services sector (among the top five sectors, including construction) grew significantly at 57.6% to US$12.1b compared with the growth of overall FDI inflows at 33.6%. FDI inflows to the hotel and tourism sector increased by 328% in FY13 (April to November) over the corresponding period in the previous year.

The residential segment is the key sub-segment of the real estate industry in the country. Growth in this segment is primarily driven by increasing urbanization and demographics, and rising income levels. Residential projects are currently the preferred option for investors, since demand for homes in metros and tier-II cities are virtually limitless in India, at the right price points. By allowing ECB in the low-cost housing segment and extending the 1% interest subvention on housing loans up to INR1.5m, the GOI aims to bring price stability and affordability over the long term.

The commercial real estate segment (primarily office space) is growing in tandem with the country’s booming economy. Commercial and retail are potentially attractive investment options, especially in larger cities, with a return of 10% to 12% given the growing demand for office space in metros. Seven cities (Bengaluru, Chennai, Hyderabad, Kolkata, Mumbai, the National Capital Region and Pune) cater to 75% of the total demand for commercial real estate. While consumer spending has increased, rentals for retail real estate continue to remain under pressure. The GOI has allowed 100% FDI in single-brand retail and 51% FDI in multi-brand retail, which may be the next boom in retailing. Triggered by a rise in income levels, the middle class is poised to transform the retail landscape in India.
Ongoing development has made the Indian hospitality segment more functional and practical, helping it gain acceptance the world over. The GOI has stepped up reforms to accelerate industry growth with liberalization in the regulatory framework, investment-friendly schemes, support for creating world-class infrastructure, better air and land connectivity, and regional setups in tier-III and IV cities. Currently, 29 megatourism projects are being initiated across 22 states. The GOI is focusing on the PPP model and is looking beyond traditional tourism avenues to new initiatives: medical tourism, sports and adventure tourism, religious circuits, wildlife safaris, rural tourism, ecotourism, cruise tourism and wellness tourism.

According to the World Travel and Tourism Council, travel and tourism in India is expected to grow by 12.7% until 2019. The Indian hotel industry is enjoying increased foreign investment and the entry of international brands. Most major international hotel brands, such as Starwood, Hilton, Marriott, Hyatt and Accor, already have a growing presence in India and have an enhanced pipeline. The emergence of branded budget and economy segment hotels presents significant opportunities. An emerging market exists in the hospitality sector in India.
Regulatory scenario

FDI regulation

FDI of up to 100% is permitted under the automatic route in:

- Townships, housing, built-up infrastructure and construction-development projects (including housing, commercial premises, educational institutions, recreational facilities, city and regional level infrastructure, etc.), subject to prescribed conditions**

- The establishment and operation of hotels and resorts

- The establishment and operation of hospitals

- Set up of SEZs

- Set up of industrial parks

- Construction-development activities for the education sector and for old-age homes

**The prescribed conditions are as follows:

- Subject to area restrictions (10 hectares for service housing plots; for others, 50,000 sq mts built-up areas)

- Minimum capitalization - US$10m (US$5m in the case of JV with an Indian partner)

- Lock in – each tranche of foreign investment locked in for three years from infusion

- 50% percent of the project to be completed within five years of all statutory clearances —this condition is applicable to each project

- Sale of undeveloped land not permitted

ECB regulations

ECB is not permitted in the real estate sector in India. However, it can be accessed for hotels, hospitals, low-cost housing and industrial parks, and by developers of SEZs to provide infrastructural facilities within the SEZ.
Recent developments and industry outlook

Some key measures initiated by the GOI in the real estate industry from a tax and regulatory perspective include:

- The Union Cabinet of GOI has recently passed a Real Estate (Regulation and Development) Bill to regulate the real estate sector and bring in tighter norms for selling homes by developers to safeguard buyers’ interest. Some of the key proposals, such as mandatory registration with the relevant authority for projects on plots measuring 4,000 sq mts or more, launching projects only after acquiring all the statutory clearances and maintaining a separate bank account for every project, and penal provision, for violations, are meant to foster buyers’ confidence and improve investments sentiments. The Bill was introduced in Rajya Sabha in August 2013 and has been referred to the Parliamentary Standing Committee on Urban Development for review and suggestions.\(^\text{109}\)

- The GOI has announced a supplement to the FTP 2009–14, introducing measures to revive investors’ interest in SEZs. According to the supplement:
  - The minimum land area requirement for multiproduct SEZs and sector-specific SEZs has been eased from 1,000 hectares to 500 hectares and 100 hectares to 50 hectares, respectively.
  - The minimum land requirement for setting up IT and ITES SEZs has been removed, and the only minimum built-up area criterion is to be fulfilled. Furthermore, the minimum built-up area requirement has been relaxed for tier I, II and remaining cities.
  - In addition, an “exit policy” for IT SEZs has been introduced to permit the transfer (including sales) of ownership of SEZ units.
  - The interest subvention scheme has been announced for certain specific sectors, under which 2% interest subvention is available up to March 2014.

The SEBI has recently announced the draft Real Estate Investment Trusts (REITs) guidelines. The draft guidelines explain the regulatory framework of the proposed REITs regime in India and are largely in harmony with global REIT regimes. Some of the key positives are that investment in REITs is open to all types of investors, whether resident or foreign, (foreign investment is subject to RBI guidelines) flexibility to invest in both real estate and securities; a sponsor of the REIT would continue to hold a percentage of the units of the REIT during its lifetime; compulsory distribution up to 90% of net distributable income after tax; a mandatory public float of 25%; a minimum unit size of INR0.1m and subscription size of INR0.2m per investor; and 90% of REITs assets to be invested in completed and rent-generating properties.

A new law – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – that will guide all land acquisitions by central or state governments, bringing in stricter norms and increasing landowners’ compensation significantly, has recently been passed by the Parliament and has already received the assent of the President. The new law will replace the old law of 1894 by establishing new rules for compensation, as well as resettlement and rehabilitation. It is expected that The Ministry of Rural Development plans to notify the new law with effect from 1 January 2014.

The GOI also permitted the National Housing Bank and other housing finance companies to extend ECB to finance prospective owners of low-cost affordable-housing units.

The interest subvention scheme has been extended to FY14, under which 1% subvention is allowed on housing loans of up to INR1.5m, provided the cost of the house does not exceed INR2.5m.

The purchase of immovable property (other than agricultural land) will attract withholding tax at the rate of 1% from 1 June 2013 onward if the consideration for such immovable property exceeds INR5m.
The agricultural land criterion has been modified to include agricultural land that is outside the local limits of any municipality or cantonment board, measured aerially based on the specified distance range and prescribed population size.

Transfer of land or building (or both) held as business asset or stock in trade will be taxed as business income for stamp duty, which ever is higher of actual sales consideration or value adopted for stamp duty purposes.

An interest deduction of INR0.25m is now available to individuals for low-cost residential house property costing up to INR4m.

The withholding tax on ECB (wherever allowed) has been reduced from 20% to 5% with applicable surcharge and cess for three years (subject to conditions), provided the non-resident payee has a PAN. The requirement of a PAN has been relaxed in the case of interest payment on foreign currency infrastructure bonds.

The withholding tax rate on interest payable to FIIs or QFIIs on INR-dominated bonds of an Indian company or government security has been reduced to 5% with applicable surcharge and cess, subject to specified conditions.

The rate of effective service tax has been increased from 3.09% to 3.71% for residential units that have a carpet area of more than 2,000sq ft or priced at INR10m or above.

While the Indian economy in FY13 did not keep pace with the growth in the past years, the real estate sector is expected to continue to demonstrate robust double-digit growth. The sector is expected to grow rapidly once savings and capital formation begin to increase. For sustained growth, a favorable business environment, including improved infrastructure and reduced administrative requirements, will be critical.

Overall, the long-term view for the Indian real estate industry is positive, since its fundamental demand drivers — increasing urbanization, favorable demographics, growth of the service sector and rising incomes — are intact.
B.14 Retail and consumer products

The retail sector, thriving on the burgeoning consumer market, is at the helm of India’s growth story. Often referred to as one of the marquee sectors of the Indian economy, the US$500b Indian retail sector is expected to grow at 12% to reach US$800 by 2016\textsuperscript{110}.

An important piece of the retail pie is the organized sector, accounting for approximately 7%\textsuperscript{10} of the total retail market in India in 2012. This share is expected to increase to approximately 9.5%\textsuperscript{10} by 2016 with the increase in penetration and entry of new players in the market.

The growth of the Indian economy is also being fueled by the Indian consumer market, which was valued at about US$1.1t\textsuperscript{110} in 2012 and is expected to grow at a healthy rate of 13%\textsuperscript{10} until 2020 to reach a size of US$3t\textsuperscript{110}. 
## Regulatory scenario

The current regulatory scenario for the retail and consumer products sector is described below:

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<th>FDI limit</th>
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<td>FDI up to 51% permitted under the government approval route (subject to certain conditions)</td>
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<tr>
<td>Single-brand retail trading</td>
<td>• FDI up to 49% permitted under the automatic route (subject to certain conditions)</td>
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<tr>
<td></td>
<td>• Beyond 49% permitted under the government approval route (subject to certain conditions)</td>
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<td></td>
<td>• FDI beyond 51% permitted, with an additional requirement of 30% sourcing mandatorily from India, preferably from micro, small and medium enterprises</td>
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<td>Wholesale cash and carry</td>
<td>100% permitted under the automatic route (with certain conditions)</td>
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<td>E-commerce activities</td>
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<tr>
<td>Franchise arrangement</td>
<td>No permission required by a foreign franchisor to provide franchise to any entity in India</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>100% FDI allowed in manufacturing and sale</td>
</tr>
</tbody>
</table>
Recent developments and industry outlook

Recent developments

The GOI made a momentous announcement in September 2012 by opening multi-brand retail trading in India for foreign players up to 51% under the government approval route, subject to prescribed conditions, and liberalizing the conditions for regulating FDI in single-brand retail trading by easing up sourcing and brand ownership conditions.

To further boost foreign investment and strengthen the confidence of foreign investors in India, the Government, via a press note dated 22 August 2013, further relaxed foreign investments in single-brand retail trading by altering the government approval route to the automatic route for investment up to 49%.

Also, the Government amended the definition of “group company” under the FDI policy. The definition incorporated in the FDI policy is as follows:

“A group company means two or more enterprises which, directly or indirectly, are in a position to:

(i) Exercise 26% or more of voting rights in other enterprise;

(ii) Appoint more than 50% of members of board of the directors in the other enterprise.

This has put to rest the ambiguity surrounding the group company definition in light of cash-and-carry trading, wherein it was required that a company could not sell more than 25% of the total turnover of its wholesale venture to its group companies.

Industry outlook

India is at the cusp of consumerism, and demand for discretionary spending categories has been increasing faster than the overall consumption market. This has urged Indian players to substantially enlarge their retail and consumer products business and has propelled foreign MNCs to establish a strong footprint in India.
Traditionally, the Indian consumer wallet has been dominated by necessity categories, such as food and home products. However, the changing socioeconomic and demographic profile is having an impact on the consumption pattern. Although discretionary spending has been increasing, food is expected to continue accounting for the biggest part of the Indian consumption pie. The pattern of food consumption is likely to shift toward the category of value-added, processed and packaged food. Apart from this, discretionary spend on items such as lifestyle, home products and transport and communication is expected to grow at a CAGR of 15%-20\%^{10}, giving rise to the next wave of consumerism.

The retail sector is also expected to tread the path of expansion. India's changing demographic scenario would provide impetus to the growth of the retail sector, which is already on a high-growth trajectory. With a population of more than 1.2\,b^{110} as of 2011, a growing middle-income group and with around 57\%^{10} of the population as of 2011 in the working age group, the growth trend in this sector seems inevitable.

The organized market, valued at US\$35\,b^{110}, is expected to grow at 21\% per annum to reach a size of US\$76\,b^{110} by 2016. The growth in the organized retail market is likely to be driven by demand-side factors, such as an increase in the consumption of value-added and imported products, as well as supply-side factors, including penetration into tier-I and II cities, and the introduction of new (specialty) formats.

Growth in the organized sector and the liberalization of India's regulatory environment have amplified the interests of foreign players in the Indian retail sector. Rise in disposable income, favorable demographic patterns, the development of rural India and the liberalization of the regulatory environment are expected to boost the retail and consumer products sector in India.
B.15 Roads and highways

India has one of the largest road networks in the world, spread across approximately 4.69m km. Roads are the preferred mode of transportation in the country and account for 85% of the passenger traffic and 60% of the freight traffic. National highways, which account for only around 2% of the country’s total road length, account for around 40% of the total road traffic. In the last five years (2006 to 2011), the number of vehicles in the country has grown at 10% annually.\(^\text{111}\)

### Regulatory scenario

In India, national highways are administered by the Ministry of Road Transport and Highways and the National Highway Authority of India (NHAI). State highways and major district roads are governed by respective State Public Works Departments (PWDs) and road development corporations of various states. Rural roads are monitored and maintained by the Ministry of Rural Development.

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\(^{111}\) Ministry of Road Transport and Highways 2012-13 annual report.
As roads form an integral part of the economic and social development of a country, the GOI has made concerted efforts to improve road connectivity in India. It has announced policy measures to attract foreign and domestic private investment for road development. Some of these policy measures include permission of up to 100% FDI and provision of capital grants of up to 40% of the project cost to enhance the viability of projects.

Additionally, the GOI has also announced policy measures to create substantial opportunities for private investors and increase the scope of PPP on road projects. Over the years, investment in the sector has increased considerably and is expected to increase from INR1084b during the Eleventh Five Year Plan (2007-12) to INR3,976b in the Twelfth Five Year Plan (2012-17). This investment has been made via public and private funding.

Recent developments and industry outlook

The GOI has launched the National Highway Development Programme (NHDP) to improve and maintain the road network. The primary objective of the NHDP is to develop and upgrade more than 50,000 km of national highways, in seven phases, with an investment of INR4,719.75b until 2015.

Funds for the program are being arranged through budgetary allocation and a central road fund, as well as external assistance and market borrowing. During 2012-13, INR520.84b had already been spent on NHDP projects.

The GOI has also launched the Pradhan Mantri Gram Sadak Yojana (PMGSY) to provide connectivity to isolated rural habitations. Under the program, around 419,000 kms of roads had been cleared as of November 2010. This will benefit 107,974 habitations. During the Eleventh Five Year Plan, INR650.02b was spent on PMGSY.

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113 Ministry of Road Transport and Highways 2012-13 annual report.
114 Economic survey 2012-13, Union Budget and Economic Survey website, indiabudget.nic.in/.
According to the Planning Commission, total investment in the road sector during the Twelfth Fifth Year Plan (2012-17) will amount to approximately INR3,976b, of which ~45% is expected to be contributed by the private sector.\footnote{Press Information Bureau, GOI - release dated 7 May 2013.}

Due to the current depressed economic scenario, the sector is currently experiencing funding constraints, leading to a delay in development of the projects. There is limited liquidity available with banks, as they are reaching their sectoral limit for the roads sector. Private developers are also experiencing liquidity crunch, leading to delays in meeting upfront equity requirements. Procedural delays in granting clearances and land for the projects also reduce project viability.
These factors have led to a depressed interest in the sector from private developers. As a consequence, the Ministry of Road and Transport/NHAI could award only 1,166km of road projects in FY13. In FY14 as well, the Ministry/ NHAI has decided not to award any project until November 2013.\textsuperscript{116} 

The Ministry/ NHAI has taken steps to ease procedural delays, such as delinking environment clearance from forest clearance, thereby allowing companies to start their road-widening work with just the environment clearance, without needing to wait for forest clearance. Some notable steps to ease funding constraint have been:

- Approval from the Government to allow complete substitution of original developers from projects with new developers
- Approval from the NHAI to raise subordinate loans by up to 30% of total project cost of the NHAI through securitization of future cash flow in BOT (toll) projects
- Cabinet approval for premium\textsuperscript{117} rescheduling of road projects on a case-to-case basis, thereby reducing the financial burden of sharing a significant amount of toll income with the NHAI in the initial years

These steps are expected to release funds in the sector that can be deployed in other projects. These steps are aimed at reviving the road construction industry. However, it remains to be seen how effective these steps will be.

\textsuperscript{116} Based upon the bidding criteria, in some projects, the winning developer agrees to pay a premium or share a part of the annual toll income with the authority (NHAI).

\textsuperscript{117} Financial Express, dated 24 July 2013.
B.16 Telecommunications

The telecommunications sector has played a pivotal role in the socioeconomic development of India. In fact, the Indian telecom sector is one of the key architects of the accelerated growth and progress of other segments of the economy. Enhanced connectivity improves governance, business communication, security, response to emergencies and the overall strengthening of the country’s sociocultural ethos. The contribution of the telecom sector has had a multiplier effect on socioeconomic growth due to associated individuals and businesses.

The Indian telecom market has been one of the fastest growing in the world, particularly due to unprecedented growth in mobile telephony, and it is currently the world’s second-largest telecom market in terms of subscriber base.\textsuperscript{118} This high growth rate has been achieved primarily due to a sharp decline in tariffs, fueled by intense competition. This is evidenced by the fact that the number of telephone connections at the end of September 2013 stood at 899.86m as compared with 41m at the end of December 2001. This growth has been cemented by the cellular segment (mobile phones), which alone accounted for 870.58m connections.\textsuperscript{119} The composition of the telecom sector has also witnessed a structural change, with the private sector accounting for 88.33\% of the total connections.

The launch of 4G has placed India among the top telecom markets in the world and can be rightly said to be the beginning of a golden era in India’s telecom industry. India has recorded significant growth in the consumption of data and content over mobile devices and the proliferation of mobile devices with the introduction of 3G and 4G mobile services. Value-added services such as mobile banking are gaining momentum in India as banking transactions by customers grew by 150\% to US$313.2m in September 2013 from US$125m in January 2013.


Regulatory scenario

The Indian telecommunication industry is supported by a strong regulatory framework, which ensures efficient policy development and administration. The telecom regulatory framework in India consists of the following key bodies:

- The Department of Telecommunication (DoT) is the central governing body for the telecommunication industry. It formulates policies for the development of the sector, awards telecom licenses and is also responsible for frequency management.
- The TRAI regulates tariffs, advises the GOI about introducing new technologies and tracks service providers to ensure that they adhere to the guidelines and meet the quality of service benchmarks.
- The Telecom Disputes Settlement and Appellate Tribunal has been set up to resolve all disputes between a licensor and a licensee, two or more service providers, and between a service provider and a group of consumers.

FDI in companies engaged in various telecommunication services is permitted as follows:

- With the intention of increasing flow of foreign investment into India and strengthening the confidence of foreign investors in India, on July 16 2013, the GOI decided to enhance the FDI limits in some sectors, including the telecom sector. The decisions were taken in a meeting chaired by the Prime Minister, on the basis of the recommendations of the Mayaram Committee. Pursuant to the same, the FDI limit in basic and cellular services has been increased from 74% to 100% via press note no. 6 dated 22 August 2013. Under the revised policy, FDI up to 49% is permitted under the automatic route, and FDI beyond 49% and up to 100% is permitted under the approval route requiring prior approval from the FIPB.
- Infrastructure providers – FDI of up to 49% is permitted under the automatic route and FDI beyond 49% and up to 100% is permitted under the approval route (requiring prior approval from the FIPB).
Recent developments and industry outlook

National Telecom Policy 2012 (NTP 2012)

- In May 2012, the GOI approved NTP 2012, which lays out the broad framework for India’s graduation to the next level of development in the telecommunication space. NTP 2012 is a progressive policy with different flavors for the diverse set of stakeholders across the telecom value chain, including operators, equipment manufacturers, infrastructure providers and Value Added Services (VAS) players. Some of the key objectives of NTP-2012 include:
  - Rolling out one nation – one license across services and service areas; delinking spectrum in respect of all future licenses
  - Introducing a simplified merger and acquisition regime while ensuring adequate competition
  - Rolling out one nation – full mobile number portability and nationwide free roaming
  - Promoting domestic production of equipment to meet 80% of telecom sector demand
  - Enhancing the adoption of green policy in telecom and incentivizing the use of renewable energy sources for sustainability
  - Extending benefits currently available to the infrastructure sector to telecom, including rationalizing taxes, duties and levies
  - Promoting an ecosystem for participants in the VAS industry value chain to make India a global hub for VAS
Unified licensing regime

In April 2012, the TRAI released its recommendations on Guidelines for Unified License (UL) regime in India and the migration of existing licenses to the UL regime, which have subsequently been notified by DoT on 2 August 2013. Broadly, the framework of the UL regime provides for the following:

- Under UL, spectrum has been de-linked from licenses. While one company can only hold one license, it can get permits for multiple services, including access to internet, national long distance, international long distance, etc.
- UL abolishes cross holdings in the same telecom circle; now, no telecom operator can hold any stake in a rival operator in the same circle.
- Licensees are allowed to migrate to UL if they want to expand their service to include any additional service or service area.
- An entry fee of US$3m and a maximum performance bank guarantee of US$44m for UL.
- Minimum paid-up equity capital and net worth to be maintained, depending upon the service and service area, limited to a maximum of US$5m.
- If a licensee obtains any other service license by way of acquisition or merger, the license so obtained will have to be migrated to UL.
- The annual license fee is to be levied as a percentage of Annual Gross Revenue (AGR) at 8% subject to a minimum of 10% of the entry fee from the second year.
- A new UL will be valid for 20 years; it can be renewed for another 10 years.

Telecom M&A guidelines

The first-ever policy on Merger and Acquisition (M&A) for the telecom sector is likely to be announced in November 2013. The Telecom Commission has permitted a combined entity to have a market share of up to 50% in terms of subscribers, instead of 35% allowed earlier, almost ruling out any scope for a merger between the top two telecom operators in any circle. However, the M&A policy is not final as it has to be approved by the Cabinet.
Full Mobile Number Portability (MNP)

MNP allows a subscriber to retain their mobile number when they move from one service provider to another. Indian mobile phone users will now be able to keep the same number when they are moving to a different state by April 2014 as the TRAI has mandated mobile phone companies to implement full MNP within six months from September 2013.

Spectrum auction and re-farming

- In November 2012, the GOI re-auctioned 122 2G band telecom licenses that had been canceled pursuant to the decision of the Supreme Court in February 2012. The actual collection from the re-auction stood only at US$1,880m, against the target of US$8,000m as set by the Government. The lower collection was primarily on account of the high reserve price set by the Government, making it unaffordable for telecom companies battered by falling profit margins and burdened by rising debt.
- The GOI has decided to re-farm spectrum in the 900 MHz band and replace it with spectrum in the 1800 MHz band. This move is expected to result in an incremental capex of US$10,940m and an incremental annual opex of US$2,360m for operators.

One-time spectrum fee

The GOI has levied a one-time prospective spectrum fee on all existing mobile operators holding spectrum beyond 4.4 MHz in the 900Mhz and 1800 MHz bands, and a one-time retrospective fee will be charged for all excess spectrum above 6.2 MHz from July 2008 to December 2012. This decision is expected to impose a net burden of US$5b on telecom operators.

Radiation norms

- Telecom operators have been mandated to cut the radiation emitted from mobile towers below 450 milli watts per square meter.
- All new mobile handsets in India have to comply with the specific absorption rate (SAR) values of 1.6 watt per kg averaged over one gram of human tissue.
Access facilitation charges for submarine cable landing stations

On 21 December 2012, the TRAI released The International Telecommunication Cable Landing Stations Access Facilitation Charges and Co-location Charges Regulation, 2012. These regulation provide for minimum access facilitation charges and co-location charges payable by International Long Distance Operators (ILDOs) or Internet Service Providers (ISPs) for accessing the capacity acquired on an indefeasible right to use basis or on a short-term lease basis from an owner of submarine cable capacity or a member of a consortium owning submarine cable capacity. This would result in a likely reduction in the price of International bandwidth or International Private Leased Circuits (IPLC) for ISPs/BPOs/call centers, SMEs and other ITES providers.

Definition of AGR in license agreements for the provision of internet services and minimum presumption AGR

On 28 December 2012, the TRAI had released a consultation paper, wherein recommendations and comments have been invited from stakeholders on:

- The Definition of AGR
- The applicability of minimum presumption AGR to broadband wireless access spectrum holders under internet service or access service licenses and other licenses (with or without spectrum)
- Suggestions on amendments required in the formats of statements of revenues and license fees reported by various categories of internet service licensees and unifies access service licensees
Revised security norms for telecom equipment used by telecom licensees

In 2011, the DoT issued amendments in telecom license regulation to lay stringent rules regarding the procurement of telecom equipment and made service providers responsible for any security breach in their networks. Key compliances to be undertaken by telecom licensees areas follows:

- Telecom operators are required to get network security audited from a network audit and certification agency every FY.\(^{120}\)
- Telecom operators can only import equipment certified according to Indian or international standards by any international agency until 31 March 2013. Thereafter, the equipment is required to be certified by authorized laboratories in India.
- Guidelines for the monitoring and logging of all operation and maintenance commands for a period of 12 months has been prescribed. Moreover, the storage of location details of subscribers has also been prescribed. A compliance report is also required to be submitted for each FY on 1 April of the next FY. The licensee is obligated to provide location details of mobile customers in the license service area within prescribed time with a certain degree of accuracy. It also needs to submit half-yearly status reports in the prescribed format.

Security of network devices

- The Telecom Commission, the highest decision-making body in the Ministry of Communications, has recently cleared formation of a Telecom Security Directorate, for overall coordination of all security-related activities. In addition, a National Telecom Network Security Coordination Board will be set up to frame standards and procedures for testing network gear and tracking implementation of the security policy by the telecom industry. India’s telecom security policy is intended to implement measures to secure all network devices, local area and enterprise networks, and also build safeguards to isolate the country’s mobile networks in case of potential cyber-attacks.

\(^{120}\) An FY represents period starting from April 1 of the year and ending with 31 March of the subsequent year.
Annual reporting

To create a fair and transparent policy environment that promotes a level-playing field and facilitate fair competition, the TRAI has issued the Reporting System on Accounting Separation Regulation 2012 (7 of 2012). These regulations rationalize and standardize the reporting system, and strengthen audit and accountability provisions. Furthermore, Regulation 5 prescribes the submission of audited accounting separation reports by specified service providers within six months of the end of accounting year, based on historical cost accounting on a yearly basis and on replacement cost accounting every second year. On 15 October 2012, the TRAI issued The Reporting System on Accounting Separation (Amendment) Regulation 2012, prescribing financial disincentives on telecom service providers for non-compliance of Regulation 5 of The Reporting System on Accounting Separation Regulation 2012 (7 of 2012).

Going forward, given that 70% of the Indian population is residing in rural areas but it accounts only for 27% of the wireless subscriber base, rural India is anticipated to drive subscriber growth in mobile telephony. However, as revenue growth from voice services starts to diminish, telecom operators are now focusing on non-voice application services for revenue growth.

We can also expect a hike in tariffs, as operators cope with high spectrum auction fees, a one-time spectrum usage charge and potential investments arising from spectrum re-allocation or re-deployment.

Furthermore, the NTP 2012 and UL regime, once implemented, are expected to enable operators to utilize their network and spectrum optimally and efficiently.
B. 17 Digital and e-commerce

The e-commerce market in India has enjoyed phenomenal growth of over 40% in the last few years from US$3.6b in 2009 to approximately US$10b in 2012. Although the trend of e-commerce has been making rounds in India for 15 years, the appropriate ecosystem has now started to fall in place. The considerable rise in the number of internet users, the uptake of the Cash on Delivery (COD) model, growing acceptability of online payments, the proliferation of internet-enabled devices and favorable demographics are the key factors driving the growth story of e-commerce in the country.

The Indian e-commerce sector can be divided into two segments:

- Online travel sector: includes air, rail, hotel reservations, car rentals and tour packages, and covers approximately 70% of the market
- Online non-travel sector: includes e-tailing, digital downloads, financial services and other online services; in 2011–the market’s size was about US$450m, and it is estimated to reach US$9b in 2016 and US$70b by 2020, an impressive CAGR of 61%.

![E-commerce market share](image)

Source: IAMAI-IMRB International

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Online travel has traditionally been the largest e-commerce sub-sector (by revenue) in India. The online retail segment has evolved and grown significantly over the past few years and is expected to match online travel revenues by 2015.\footnote{122} The percentage of internet users shopping online is less than 10\% at approximately 10m users. Nevertheless, this number is growing at 30\% annually, versus the global average growth rate of 8\%-10\%.\footnote{123} The COD model has been one of the key growth drivers and is touted to have accounted for 50\% to 80\% of online retail sales.\footnote{124} Players have adopted new business models, including stock-and-sell, consignment and group buying; however, concerns surrounding inventory management, location of warehouses and in-house logistics capabilities are posing teething issues.

Classifieds, the earliest entrant in the e-commerce space in India, is undergoing a shift in operational model from vertical to horizontal offering. Players now offer a variety of services ranging from buying or selling cars to finding domestic help.

Over the past three years, 53 venture capital firms had invested US$853m in 53 e-commerce companies.\footnote{125} The bulk of the funds raised by players were used to expand market presence, build logistics and supply chain capabilities, and enhance technology platforms.

Amazon.com, the world’s leading e-commerce site, has recently launched its marketplace model in India. Under the marketplace model, the US company will offer a platform for third parties and consumers to sell and buy products.\footnote{126}
Mobile commerce is the buying and selling of goods and services through wireless handheld devices. Mobile commerce is growing rapidly and proving to be a stable and secure supplement to e-commerce due to the record growth in the mobile user base in India in recent years. The value of m-commerce transactions is set to grow from US$127m to US$12b by 2017 at a CAGR of 293%\(^\text{127}\). The promising growth of the market has encouraged many stakeholders such as financial institutions, mobile network operators (MNOs), technology solution providers, and handset and manufacturers to invest in the market. With the introduction of technologies such as near-field communication and Radio Frequency Identifiers (RFID) in mobile devices, mobile commerce payment has become a more convenient option for end users.

### Regulatory scenario

There are no specific e-commerce laws in India. The sector is governed by the Information Technology Act 2000, which regulates the legal obligations of sellers and buyers of goods and services in cyberspace\(^\text{128}\). In addition to Information Technology Act 2000, e-commerce laws in India need to comply with other statutory laws in force in the country, as well as banking and financial laws, where applicable. For example, financial intermediaries are required to obtain licenses from the RBI to provide services.

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128 Legal Requirements Of Undertaking E-Commerce In India,” CJNews India website, www.cjnewsind.blogspot.in/2012/02/legal-requirements-of-undertaking-e.html, accessed 5 June 2013.
In September 2012, the GOI made a landmark announcement, allowing 51% FDI in multi-brand retail, subject to certain conditions. However, the DIPP clarified that this mandate does not apply to B2C e-commerce retail and is applicable only to retailers with brick-and-mortar operations. One of the reasons cited for this was the difficulty encountered in monitoring interstate transactions in e-commerce activities. Therefore, this relaxation does not benefit pure-play B2C e-commerce players and may not benefit retailers engaged in B2C e-commerce operations either.\(^{129}\)

The RBI and the TRAI have taken initiatives to take m-commerce to the unbanked population with the help of several banks and MNOs. The RBI has approved the proposal by the National Payment Corporation of India for mobile payments for merchant transactions. The RBI has also increased the limit of virtual money that a user can load on a mobile phone from INR0.005m to INR0.05m.\(^{130}\) This will encourage end users to adopt mobile wallet services and, hence, will provide a boost to the mobile commerce market in India.

**Recent developments and industry outlook**

The internet user base has been growing significantly, with an exponential increase in internet usage. Internet penetration in India is currently at the same stage as that of China, which was at \(~10.5\%\) in 2006–07, and it is expected to follow a similar growth trajectory.\(^{131}\) China is currently at 40.1\% penetration.

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\(^{130}\) RBI.

Improvements on the payment front have brought about an increase in the use of plastic money by Indian consumers. Payment gateways have now been made more secure through multiple levels of authentication via one-time passwords and transaction passwords. This has helped strengthen users’ confidence in carrying out online transactions, and it is expected to grow from 11m in 2011 to 38m in 2015. These enablers augur well for the development of e-commerce in India.

The mobile commerce market in India is driven by several drivers, including the increase in mobile subscription. The market is also witnessing increasing collaboration between service providers and banks. Most of the mobile service operators have tie-ups with leading banking service providers to provide mobile payment facilities. The fact that an average online user is spending more time online gives these players the opportunity to draw more users to their websites through innovative marketing strategies, such as those revolving around social media.

132 Make MyTrip Limited, Oppenheimer, 29 September 2011, via Thomson Research.
Furthermore, to fully utilize the opportunity, players are trying to leverage the growing number of mobile devices in the country. The focus is now on developing mobile-compatible websites and applications and improving channel-specific customer experience, so that user interfaces are designed to encourage user engagement. This would allow customers to log on to easy-to-access platforms and browse e-commerce websites on their mobile devices.
Investment climate and foreign trade

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Investment climate and foreign trade

C.1 Foreign investment framework

The FDI regime was progressively liberalized during the 1990s. This process continued in the 2000s, with most restrictions removed and procedures simplified. With limited exceptions, foreigners can invest directly in India, either on their own or as a JV. Today, there are very few industries in which foreign investment is prohibited. Moreover, investment ceilings, which are applicable in certain cases, are being gradually phased out.

C.1.1 Foreign investment in India

Foreign investment in India can be broadly categorized as follows:

- FDI
- Foreign portfolio investments by NRIs and FIIs
- Foreign venture capital investment
- Investments on a non-repatriation basis by NRIs and PIOs

Normally, controlling shareholding is expected in FDI. However, when there are restrictions in shareholding, at least a substantial share is of the foreign investor. Such investments are generally long-term ones.

On the other hand, portfolio investments are only made with the intention of investing in securities to earn profits through appreciation of capital and dividends. There is no intention to control the company in which investment has been made.
C.1.1.1 FDI

The GOI permits FDI on an automatic basis, except with respect to a small negative list, which includes the following:

- Proposals coming under the list of activities or sectors prohibited for FDI by the GOI
- Proposals outside the ambit of notified sectoral policies or caps

Please see Appendix 3 for a list of sectors in which FDI is prohibited or permitted with conditions or sectoral caps.

The GOI has formulated a yearly consolidated FDI policy with the intention and objective of promoting FDI through a policy framework, which is transparent, predictable, simple and reduces the regulatory burden on the investors. All earlier press notes, press releases and clarifications on FDI issued by the DIPP and the Ministry of Commerce and Industry, stand rescinded and subsumed with the implementation of the consolidated FDI policy.

Policy pronouncements on FDI through press notes take effect from the date of their issue, regardless of procedural instructions that are issued by the RBI via relevant A.P. DIR series circulars to amend the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulation, 2000.

The recent liberalization in the FDI policy, which was approved on 22 August 2013, is provided in the table below:

<table>
<thead>
<tr>
<th>Sector</th>
<th>Previous sectoral cap and route</th>
<th>Present sectoral cap and route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petroleum and natural gas (refining)</td>
<td>49%—approval route</td>
<td>49%—automatic route</td>
</tr>
<tr>
<td>Commodity, power and stock exchanges, depositories and clearing corporations</td>
<td>49% (26% FDI +23% FII)—approval route</td>
<td>49% (26% FDI +23% FII)—automatic route</td>
</tr>
<tr>
<td>Sector</td>
<td>Previous sectoral cap and route</td>
<td>Present sectoral cap and route</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>---------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Asset reconstruction companies</td>
<td>74% of paid-up capital of ARC (FDI+FII) (approval route)</td>
<td>100% of paid-up capital of ARC (FDI+FII) Up to 49% — automatic route Beyond 49%—approval route</td>
</tr>
<tr>
<td>Credit information companies</td>
<td>49% (FDI + FII) — approval route</td>
<td>74% (FDI + FII) — automatic route</td>
</tr>
<tr>
<td>Telecom</td>
<td>74%—approval route</td>
<td>100% Up to 49% — automatic route Beyond 49%—approval route</td>
</tr>
<tr>
<td>Trading in single-brand retail</td>
<td>100%—approval route</td>
<td>100% Up to 49% — automatic route Beyond 49%—approval route FDI beyond 51%, additional requirement of 30% sourcing (mandatorily) from India, preferably from micro, small and medium enterprises, to be fulfilled</td>
</tr>
<tr>
<td>Courier services</td>
<td>100%—approval route</td>
<td>100%—automatic route</td>
</tr>
<tr>
<td>Defense</td>
<td>26%—approval route</td>
<td>26%—approval route Increased limits of foreign investment, ensuring access to modern and “state-of-the-art” technology in India to be considered by the Cabinet Committee on Security (CCS) and allowed on a case-to-case basis (Investment by FII through portfolio investment is not permitted)</td>
</tr>
</tbody>
</table>
C.1.1.1.1 FIPB

The FIPB is empowered and chaired by the Secretary, Department of Economic Affairs, of the MoF. It has been specifically set up to expedite the approval process for foreign investment proposals.

Proposals for FDI need to be submitted online, followed by their hard copies. The FIPB has the flexibility to examine all proposals in their totality, free from predetermined parameters or procedures.

The proposals under the ambit of the non-automatic route, and involving an investment of US$190m (equivalent of INR12b) or less, are considered and approved in the meeting of the FIPB by the Finance Minister. Projects with a higher investment than this value are submitted by the FIPB to the Cabinet Committee on Economic Affairs for its approval.

C.1.1.1.2 Features of FDI policy

- Domestic companies are permitted to issue equity shares, compulsorily and mandatorily convertible preference shares (CCPS) and debentures that are fully, compulsorily and mandatorily convertible (CCDs) to non-residents, subject to prescribed pricing guidelines and valuation norms.
- Issue of warrants, partly paid shares, etc., requires the prior approval of the FIPB. Issue of non-convertible, optionally convertible or partially convertible preference shares and debentures needs to comply with the RBI’s ECB guidelines.
- FDI is calculated on the basis of ownership and control of the parent Indian company to measure foreign investment in a step-down subsidiary.
- No government approval is required for FDI in virtually all the sectors or activities, except for a negative list formulated by the GOI. The FIPB considers proposals for foreign participation that do not qualify for automatic approval, and decisions on foreign investment proposals are usually taken within four to six weeks of applications being submitted.
Free repatriation of capital investment is permitted, provided the original investment (on a repatriable basis) was made in convertible foreign exchange and is subject to payment of taxes and other specified conditions.

- All royalty payments, lump-sum fees for the transfer of technology and use of trademarks or brand name are permitted under the automatic route without any monetary or duration limits.

- Use of foreign brand names or trademarks is permitted to sell goods in India.

- “Single-window” clearance facilities and “investor escort services” are available in various states to simplify the approval process of new ventures.

- The GOI has recently liberalized FDI in single and multi brand retail, as well as in the civil aviation sector.

C.1.2 Foreign portfolio investments

In addition to direct investment in India, non-residents can also make portfolio investments. FIIs are allowed to invest in the primary and secondary capital markets in India under the portfolio investment scheme.

The term FII is defined as an institution that is established or incorporated outside India to make investments in Indian securities. This includes a sub-account of an FII. FIIs must register themselves with SEBI and comply with the RBI’s exchange control regulation.

Foreign pension funds, mutual funds, investment trusts, asset management companies and nominee companies, and incorporated or institutional portfolio managers or their power of attorney holders, are allowed to invest in India as FIIs. These securities include shares, debentures, warrants and units of mutual funds, government securities and derivative instruments.

Registration and eligibility

FIIs must register themselves with SEBI, subject to their meeting certain qualifying conditions. The SEBI examines whether grant of registration is in the interest of the Indian securities market. FIIs must comply with RBI’s exchange control regulation and comply with the investment limits prescribed by FII guidelines and RBI’s regulation.
Registration of sub-accounts

Apart from entities that are entitled to be FIs, other foreign investors are also eligible to register as sub-accounts. Such sub-accounts can be categorized as (i) collective investment funds and institutions, (ii) proprietary funds or (iii) foreign corporations and nationals.

C.1.3 Foreign Venture Capital Investment Route and Alternative

A SEBI-registered FVIC with specific approval from the RBI under FEMA regulation can invest in an Indian Venture Capital Undertaking (IVCU), Indian Venture Capital Fund (IVCF) or in a scheme floated by such IVCFs, subject to the condition that they are registered with SEBI.

FVCIs can purchase equity or equity-linked instruments, debt or debt instruments and the debentures of an IVCU or a VCF through an IPO or private placement, or by way of private arrangements or purchase from third parties. Furthermore, FVCIs are allowed to invest in securities on a recognized stock exchange, subject to the provisions of SEBI (FVIC) Regulation, 2000, which is amended periodically.

The SEBI has notified the SEBI (Alternate Investment Fund) Regulation, 2012 (AIF Regulation). These regulation have replaced the SEBI (Venture Capital Funds) Regulation, 1996 (VCF Regulation).

Funds registered as venture capital funds under VCF Regulation will continue to be regulated by the regulation mentioned above until existing funds and schemes are wound up. Such funds or schemes will not be allowed to launch any new schemes or increase their targeted corpus under VCF regulation.

Meaning and scope of AIFs

AIF is defined as any fund set up in India in the form of a trust, company, LLP or body corporate that is any of the following:

(i) A private pooled investment vehicle that collects funds from investors (domestic or foreign) to invest these in accordance with a defined investment policy for the benefit of the investors
(ii) An investment that is not covered under the SEBI (Mutual Funds) Regulation, 1996, SEBI (Collective Investment Schemes) Regulation, 1999, any other of SEBI’s regulation or regulated fund management activities

AIFs are segregated into the following broad categories:

(i) Category I AIF: AIFs with a positive spillover effect on the economy, for which certain incentives or concessions may be considered by SEBI, GOI or other regulation in India, and which shall include Venture Capital Funds, Small And Medium Enterprises Funds (SMEFs), Social Venture Funds (SVFs), Infrastructure Funds (Infra Funds) and such other AIFs as may be specified

(ii) Category II AIF: AIFs to which no specific incentives or concessions are given by the GOI or any other regulator, which shall not undertake leverage other than to meet day-to-day operational requirements as permitted in the AIF Regulation, and which shall include Private Equity Funds (PEFs), Debt Funds and other funds that are not classified as category I or category III

(iii) Category III AIF: AIFs including hedge funds that trade with a view to make short-term returns, use diverse or complex trading strategies and possibly use leverage, including through investment in listed or unlisted derivatives

All AIFs are required mandatorily to seek registration under the categories (given above) according to AIF regulation, and are permitted to launch multiple schemes without separately registering with SEBI.

C.1.4 Investment by NRIs

NRIs can invest in the shares or convertible debentures of Indian companies on a non-repatriable basis, apart from investing in the form of FDI. These investments do not require the FIPB’s approval and are not construed as FDI. NRIs cannot invest in companies that are engaged in certain financial services or agricultural or plantation activities. While capital is non-repatriable, dividends and interest income from such investments can be remitted as current account transactions.
C.1.5 Foreign exchange policy

Prior to 1999, India had stringent exchange control regulation under the Foreign Exchange Regulation Act, 1973 (FERA). In 1999, the GOI replaced controls under FERA with regulation under the FEMA.

With the introduction of FEMA in 1999, the objective of the GOI shifted from conservation of foreign exchange to promoting orderly development and management of the foreign exchange market in India. Foreign investment in various sectors is permitted, and there has been an increased flow of foreign exchange into India, which resulted in a substantial rise in the country's foreign exchange reserves, which, since 1991, have gone up from US$5b to around US$281b (as of 1 November 2013).

FEMA makes provisions in respect of foreign exchange transactions, which are of the following two types:

1. Current account transactions: the INR is fully convertible for trade and current account purposes. Except for certain specified restrictions, where RBI's approval is required, foreign currency may be freely purchased for trade and current account purposes.

2. Capital account transactions: such transactions are not permitted unless they are specifically allowed and prescribed conditions are satisfied.

FEMA envisages that the RBI will have a controlling role in management of foreign exchange. Since it cannot handle foreign exchange directly, RBI is empowered to issue directions to “authorized persons.” These are issued through AP (DIR) circulars. FEMA also makes provisions for enforcement, penalties, adjudication and appeals.
C.2 Regional and international trade agreements

Overview

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

C.2.1 Existing trade agreements and regulatory scenario

Some existing free trade agreements entered by India:

- CEPA with Japan
- Comprehensive Economic Co-operation Agreement (CECA) with Malaysia
- CEPA with Korea
- India-ASEAN Trade in Goods Agreement
- CECA with Singapore
- Free Trade Agreement with Sri Lanka (trade in goods)
- Agreement on South Asia Free Trade Area executed by India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka
- Framework Agreement with Thailand
- Preferential Trade Agreement with MERCOSUR countries
- SAARC Agreement on trade in services
- Preferential Trade Agreement with Chile
- Asia Pacific Trade Agreement with Bangladesh, Republic of Korea, China and Sri Lanka
- Preferential Trade Agreement with Afghanistan
- Global System of Trade Preference with 47 countries
C.2.2 Recent developments and outlook

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

C.2.2.1 Trade agreements under negotiation

Some of India’s key future trade agreements that are currently under negotiation include:

- India-European Union FTA
- India-Indonesia CECA
- India-ASEAN (Services and Investment) CECA
- India-Thailand Comprehensive Economic Cooperation Agreement
- India-New Zealand FTA
- India-European Union Free Trade Agreement (FTA)
- India-Canada Comprehensive Economic Cooperation Agreement
- India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement
- India-South African Customs Union PTA
- India-Sri Lanka FTA (to be expanded to include services and investment)
- Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
- India-Gulf Cooperation Council FTA
- India-Australia Comprehensive Economic Cooperation Agreement
- India-Israel FTA
- India-MERCOSUR PTA (scope to be expanded)
- India-Chile PTA (scope to be expanded)
C.2.2.2 Free-trade agreements under feasibility study

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

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

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

- India-Peru
- India-Russia
- India-Egypt
- India-Turkey
C.3 Major trading partners and leading imports and exports

Foreign trade in India

India accounts for 2.1%\(^{133}\) of global trade in goods and services. In 2011, India’s share of trade in commercial services reached 3.2% of global business, compared with 2.8% six years ago. The country’s exports grew by 21.3% in 2011.\(^{134}\) Moreover, they accounted for 1.7% of the world’s merchandise exports. India’s imports accounted for 2.5% of the world’s merchandise imports in 2011. Foreign trade in the country is regulated by the Foreign Trade (Development and Regulation) Act, 1992. The Ministry of Commerce and Industry is the foremost body responsible for promoting and regulating foreign trade in India.

C.3.1 Foreign Trade Policy

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

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

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

C.3.2 Exports

Most goods can be freely exported from India, except for a small number of prohibited items. India’s key exports include gems and jewelry, petroleum, engineering goods, textiles, and drugs and pharmaceuticals. The country also accounts for around 3.2% of global export of commercial services (amounting to US$305.9b in FY12).

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Principal export destinations: the UAE continues to be the top-most export destination for India’s products, ahead of the US, consecutively in FY12, FY11 and FY10. Other countries to which India exports products include the US, China, Singapore, the Netherlands, the UK, Germany and Hong Kong.

The cumulative value of India’s exports in FY13 was US$300.27b against US$305.9b in FY12 – a decline of 1.42%.

Source: Directorate General of Commercial Intelligence and Statistics; Ministry of Commerce & Industry
C.3.3 Imports

Import of all commodities is free in India, except for items regulated by any law or policy in force. Some items in the prohibited list, such as fat or oils of animals, beef, hazardous dyes and ivory, cannot be imported into India. The country’s key imports include petroleum, electronic goods, machinery, gold, pearls and semiprecious stones, and amounted to US$489.18b in FY12.

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

The cumulative value of India’s imports for FY13 was US$491.94b compared with US$489.18b in FY12 – a growth of 0.56% in dollar terms. The country’s oil imports in FY13 were valued at US$169.39b (9.34% higher than US$154.91b in FY12). India’s non-oil imports in FY13 were valued at US$322.5b – 3.6% lower than US$334.2b in FY12.
C.3.4 Balance of trade

India’s trade deficit for FY13 is estimated at US$191.67b against US$184.56b in FY12.

Imports to India are increasing rapidly, recording a CAGR of 23.59% between FY05 and FY12, due to brisk industrialization. Similarly, exports from India are also rising exponentially, recording a CAGR of 20.28% during the same period. The country’s export-to-GDP ratio stood at 16.5% in FY12.

C.3.5 Liberalization of tariffs

India’s tariff regime has witnessed a significant reduction in rates over a period of time. Tariffs fell from their peak rate of 350% in 1991 to 10% in 2012. All machinery and parts imported for industrial, mining, power or irrigation purposes attract tariff duty of 7.5%-10%.

![Balance of trade (US$ b)](chart.png)

Source: Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce & Industry
Targets of FTP 2009–14:

- Export growth of 15% p.a. until FY11, with the aim to achieve exports worth US$300b in FY12
- Export growth of 25% p.a. between FY12 and FY14
- Export target of US$500b by 2014
- Doubling India’s current share in global trade by 2020
## Entry options in India

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Entry options in India

Structures typically used by foreign investors in India are discussed below:

D.1 Liaison office

Liaison Offices (LO) are set up by foreign corporations to facilitate business promotion and explore opportunities of establishing a permanent presence in the country. These offices act as a communication channel between the head office of foreign corporations and business parties in India.

An LO is permitted by the RBI to undertake the following activities in India:

- Representing the parent company or group companies in India
- Promoting export/import from/to India
- Promoting technical/financial collaborations between parent/group companies and companies in India
- Acting as a communication channel between the parent company and Indian companies

An LO is not allowed to undertake any business or income-generating activity in India. The expenses of such offices are to be met entirely through inward remittances of foreign exchange from the head office outside India.

Foreign corporations are required to obtain specific approval from the RBI to open liaison/representative offices in India. Foreign insurance companies require approval from the IRDA and foreign banks require approval from the Department of Banking Operations and Development of the RBI.

Permission to set up an LO in India is initially granted for a period of three years and may be extended for a period of three years from the date of expiry of the original approval/extension granted by the RBI, subject to fulfillment of certain conditions.
No extension is considered for the LOs of NBFCs and those engaged in the construction and development sectors (excluding infrastructure-development companies). On expiry of the validity period, these entities may have to either close down their operations or be converted into JV or Wholly Owned Subsidiaries(WOSs), in conformity with the extant FDI policy.

**D.2 Branch office**

A Branch Office (BO) is set up as an extension of a foreign company in India, to undertake permitted commercial activities. Unlike an LO, a BO can undertake a broader scope of activities, subject to these being permitted under RBI regulation. Foreign companies are allowed to set up branch offices in India with specific approval from the RBI.

A BO is permitted by the RBI to represent its parent/group companies and undertake the following activities in India:

- Exporting/importing goods
- Rendering professional or consultancy services
- Carrying out research work in which its parent company is engaged
- Promoting technical or financial collaboration between Indian companies and its parent or overseas group company
- Representing its parent company and acting as its buying/selling agent in India
- Providing IT services and developing software in India
- Rendering technical support for products supplied by parent/group companies
- Foreign airline/shipping companies

Normally, a BO should be engaged in activity undertaken by its parent company. A BO is not allowed to engage in retail trading, manufacturing (except manufacturing within SEZs) or processing activities in India. BO are allowed to be set up in SEZs to carry out manufacturing and service activities in India without specific approval from the RBI, subject to prescribed conditions.
A BO provides the advantages of ease of operation and simple closure. On the contrary, since the exchange control guidelines relating to such operations are strict, a branch may not prove to be an optimum structure for a foreign corporation undertaking expansion or diversification in India.

D.3 Local Indian subsidiary companies

Foreign corporations can set up WOS companies in India in the form of private companies, subject to prescribed FDI guidelines. Foreign corporations can also set up J V companies with Indian or foreign partners.

The requirement of prior approval from the GOI or the RBI depends on the nature of activities undertaken by an Indian company. FDI is allowed under the automatic route in sectors where such activities are permitted, and prior approval is required in other cases.

Compared with BOs, LOs and project offices (discussed in the following paragraphs), a subsidiary company has the maximum flexibility to conduct business in India. A company can be funded through a mix of equity and debt (both foreign and local).

The exit procedure norms of companies are relatively more cumbersome compared with other forms of business.

D.4 Project office

A foreign corporation that has secured a contract from an Indian company to execute a project in India can set up a Project office (PO) in the country without obtaining prior permission from the RBI, provided the following conditions are complied with:

- The project is funded directly by inward remittance from abroad.
- It is funded by a bilateral or multilateral international financing agency.
- It has been cleared by an appropriate authority.
- The company or entity in India awarding the contract has been granted a term loan by a public financial institution or a bank in the country of the project.
However, if the criteria discussed in this chapter are not met, the foreign entity has to approach the RBI for approval.

D.5 LLP

An LLP is governed by the Limited Liability Partnership Act, 2008 and came into force in India on 1 April 2009.

An LLP aims to provide the benefits of limited liability to a company and, at the same time, allow its members the flexibility of organizing their internal management on the basis of a mutual agreement.

An LLP is a body corporate that has perpetual succession and a legal identity separate from its partners. The liability of partners is limited to their agreed contribution to the LLP.

FDI is permitted in an LLP with the prior approval of the GOI in sectors where 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. LLPs with FDI are not allowed to operate in agricultural or plantation activity, print media or real estate business. FII/FVCIUs are not permitted to invest in LLPs. Furthermore, LLPs are not permitted to avail ECB.

LLPs with FDI are not eligible to make any downstream investments. Indian companies with FDI are permitted to make downstream investment in LLPs, only if both the Indian company and the LLP operate in sectors where 100% FDI is permitted under the automatic route and no FDI-linked conditions are attached. Conversion of a company with FDI into an LLP is only permitted on prior approval being obtained from the FIPB/the GOI. Capital contribution by a partner in an LLP should only be in the form of cash. This condition is not applicable in the case of conversion of a company into an LLP.

An LLP should have a minimum of two designated partners who are individuals, with at least one of them being residents of India. The designated partners will be responsible for the LLP conforming with the provisions of LLP laws and will be liable in the event of contravention of such provisions. In the event the LLP has a body corporate as partner, then the body corporate would have to nominate an individual to act as a designated partner. However, a body corporate situated outside India cannot directly appoint an individual to act as a designated partner in an LLP.
D.6 Comparative summary of entry operations in India (typical - may change on a case-to-case basis)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>LO</th>
<th>PO or BO</th>
<th>Subsidiary company</th>
<th>LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Setting up requirements</td>
<td>Prior approval of RBI required</td>
<td>Prior approval of RBI required for BO (other than undertaking manufacturing and service activities in SEZs)</td>
<td>No prior approval required, but only post facto filings to be undertaken with RBI if activities/sectors come under the ambit of the automatic route</td>
<td>Foreign investments allowed in sectors covered under 100% automatic route with prior approval from GOI/ FIPB</td>
</tr>
<tr>
<td></td>
<td>Intimation to Director General of Police of state with prescribed information within five working days of becoming operational</td>
<td>Prior approval not required to set up PO on fulfillment of certain conditions</td>
<td>GOI/FIPB approval required in other cases as well as for post facto filings, which need to be undertaken with RBI</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Intimation to Director General of Police of state with prescribed information within five working days of becoming operational</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Permitted activities</td>
<td>Only liaison/ representation/ communication/ promotion role permitted</td>
<td>Activities listed/ permitted by RBI allowed to be undertaken Manufacturing and processing activities (except in SEZ units) not permitted for BOs PO permitted only to undertake specific activities in relation and incidental to execution of a project</td>
<td>Any activity specified in the memorandum of association of the company Wide range of activities permitted, subject to FDI guidelines</td>
<td>LLP has to be engaged in sectors/ activities for which 100% FDI is allowed through automatic route; no FDI-linked performance conditions applicable LLPs with foreign investment not eligible to make downstream investments</td>
</tr>
<tr>
<td>Particulars</td>
<td>LO</td>
<td>PO or BO</td>
<td>Subsidiary company</td>
<td>LLP</td>
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<td>--------------------------------------------------------------------</td>
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<td>--------------------------------------------------------</td>
<td>-------------------------------------------------------</td>
</tr>
<tr>
<td>3. Funding of local operations</td>
<td>Local expenses to be met out of inward remittances received from head office through normal banking channels</td>
<td>Local expenses to be met through inward remittances from head office or from earnings from permitted operations</td>
<td>Funding to be through equity or other forms of permitted capital infusion or borrowings (local as well as overseas, according to prescribed norms) or internal accruals</td>
<td>Capital contribution in LLP to be in cash by inward remittance; LLPs not eligible to raise ECB</td>
</tr>
<tr>
<td>4. Limitation of liability</td>
<td>Unlimited liability</td>
<td>Unlimited liability</td>
<td>Liability limited to extent of equity participation in Indian company</td>
<td>Liability of partners limited to their agreed contribution to an LLP, except in event of fraud, wrongful acts, etc.</td>
</tr>
<tr>
<td>5. Compliance requirements under Cos Act</td>
<td>Registration and periodical filing of accounts/other documents</td>
<td>Registration and periodical filing of accounts/other documents</td>
<td>Significantly high statutory compliance and filing requirements</td>
<td>Registration with ROC required; Filing annual accounts and submitting an annual statement of solvency</td>
</tr>
<tr>
<td>6. Compliance requirements under foreign exchange management regulation</td>
<td>Required to file Annual activity Certificate (by auditors in India) with RBI</td>
<td>Required to file Annual activity Certificate (by auditors in India) with RBI</td>
<td>Required to file periodic and annual filings relating to foreign liabilities and assets, receipt of capital and issuance of shares to foreign investors</td>
<td>No filing requirements prescribed as of now</td>
</tr>
</tbody>
</table>
### Particulars

<table>
<thead>
<tr>
<th>LO</th>
<th>PO or BO</th>
<th>Subsidiary company</th>
<th>LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report to be sent to Director General of Police of state with prescribed information along with copy of Annual activity Certificate</td>
<td>PO to submit certificate from a chartered accountant, detailing the status of the project and certifying that the accounts of the PO have been audited to the Authorised Dealer branch on an annual basis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report to be sent to Director General of Police of state with prescribed information along with copy of Annual activity Certificate</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

#### 7. Income tax rate and compliance

| LO not subject to tax in India, since not permitted to undertake any business activity in the country | Liable to be taxed on income earned at the rate applicable to foreign corporations, i.e., 43.26%(including surcharge and cess) and required to file returns of income in India | Liable to be taxed on global income at 33.99%(including surcharge and cess) on net income basis | Liable to be taxed on global income at 33.99%(including surcharge and cess) on net income basis |
| LO required to undertake annual compliance measures by filing annual information in the prescribed form | Subsidiary company liable to MAT at the rate of 20.96%(including surcharge and cess) of their book profits | LLP liable to AMT at the rate of 20.96%(including surcharge and cess) of its adjusted total income |

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135 Surcharge for FY13 is 2% if the total income is above INR10m. Surcharge for FY14 is 2% for income exceeding 10m but less than 100m. Where the income exceeds 100m for the FY14 the surcharge is to be calculated at 5%

136 Taxation under MAT/ AMT provisions is triggered when tax liability, computed at a specified percentage of book profit, is higher than that under the normal tax computation.
<table>
<thead>
<tr>
<th>Particulars</th>
<th>LO</th>
<th>PO or BO</th>
<th>Subsidiary company</th>
<th>LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Activity Certificate to be submitted to the Directorate General of Income Tax (International Taxation) accompanied by audited financial statements including receipt and payment accounts</td>
<td>No further tax on repatriation of profits, which are permissible in both cases</td>
<td>Dividend declared freely remittable but subject to distribution tax of 16.995% on dividends declared/distributed/paid, pursuant to which dividend is tax free for all shareholders</td>
<td>No DDT levied on profit distribution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Indian transfer pricing regulation applicable</td>
<td></td>
<td>Indian transfer pricing regulation applicable</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Annual Activity Certificate of BO to be submitted to the Directorate General of Income Tax (International Taxation) accompanied by audited financial statements, including receipt and payment account</td>
<td>Distribution tax to be paid only on amount of dividend distributed after reducing dividends received from subsidiary, provided distribution tax has been paid by subsidiary company</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indian transfer pricing regulation applicable</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8. Permanent Establishment (PE) | LOs generally do not constitute PE under DTAA due to limited scope of activities (however, PE/taxable presence is likely to be constituted in India if activities of the LO go | Generally constitutes PE and taxable presence under DTAA and domestic IT provisions | Independent taxable entity and not PE of foreign company |
<p>| | | | An Independent taxable entity (however, whether an interest in an LLP results in a PE for a foreign partner is still ambiguous under an LLP) |</p>
<table>
<thead>
<tr>
<th>Particulars</th>
<th>LO</th>
<th>PO or BO</th>
<th>Subsidiary company</th>
<th>LLP</th>
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</thead>
<tbody>
<tr>
<td>beyond scope of preparatory or auxiliary parameters provided in the DTAA</td>
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</tbody>
</table>

9. Repatriation of funds on an ongoing basis

Typically, not permitted to undertake any business activity in India; as such, may not be any repatriations from LO (However, in the event of closure of LO, any surplus cash may be repatriated with RBI's approval).

Approval not required for remittance of post-tax profits to head office outside India, subject to filing of requisite documents with RBI.

Does not require any approval for remittance of post-tax profits; dividends declared will be subject to distribution tax.

10. Exit mechanism

Requirement of prior approval of RBI, ROC and income tax authorities

Requirement of prior approval of RBI, ROC and income tax authorities

Exit can be through sale of shares, winding up of operations or liquidation

Winding up/liquidation can be a long and complex process

Foreign partner permitted to transfer its stake in the LLP or dissolve it

Rules framed by GOI on winding up and dissolution of LLP to be followed
### D.7 Comparative matrix of various forms of business

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<thead>
<tr>
<th>Particulars</th>
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<tr>
<td>1. Legal status</td>
<td>Represents the parent company</td>
<td>Extension of parent company</td>
<td>Independent legal status</td>
<td>Independent legal status</td>
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<td>2. Process of setup</td>
<td>Easy</td>
<td>Easy</td>
<td>Complex</td>
<td>Moderately complex</td>
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<tr>
<td>3. Scope of activities</td>
<td>Liaison activities</td>
<td>Restricted scope</td>
<td>Significant flexibility</td>
<td>Activities for which 100% FDI is allowed without any approval</td>
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<tr>
<td>4. Compliance requirements</td>
<td>Limited</td>
<td>Limited</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>5. Income tax rate</td>
<td>Generally, no tax liability, since it cannot carry out any commercial or income-earning activities</td>
<td>43.26% on a net income basis (40% plus 5% surcharge plus 3% cess there on)</td>
<td>33.99% on a net income basis (30% plus 10% surcharge plus 3% cess there on) (If MAT is applicable, it is levied at 20.965% of its total income — 18.5% plus 10% surcharge plus 3% cess.)</td>
<td>33.99% on a net income basis (30% plus 10% surcharge plus 3% cess there on) (If AMT is applicable, it is levied at 20.965% of its total income — 18.5% plus 10% surcharge plus 3% cess.)</td>
</tr>
<tr>
<td>6. Ease of exit</td>
<td>Easy</td>
<td>Easy</td>
<td>Complexity depending on type of strategy adopted</td>
<td>Complexity depending on type of strategy adopted</td>
</tr>
</tbody>
</table>

- **Liaison office**
  - Represents the parent company
  - Extensions of the parent company

- **Project office/branch office**
  - Extensions of the parent company
  - Independent legal status

- **Subsidiary company**
  - Independent legal status
  - Activities for which 100% FDI is allowed without any approval

- **LLP**
  - Independent legal status
  - Activities for which 100% FDI is allowed without any approval

#### Income tax rates:

- **Liaison office**
  - 43.26% on a net income basis
  - (40% plus 5% surcharge plus 3% cess there on)

- **Subsidiary company**
  - 33.99% on a net income basis
  - (30% plus 10% surcharge plus 3% cess there on)
  - (If MAT is applicable, it is levied at 20.965% of its total income — 18.5% plus 10% surcharge plus 3% cess.)

- **LLP**
  - 33.99% on a net income basis
  - (30% plus 10% surcharge plus 3% cess there on)
  - (If AMT is applicable, it is levied at 20.965% of its total income — 18.5% plus 10% surcharge plus 3% cess.)
## Funding of Indian businesses

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<td>E.2</td>
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Funding of Indian businesses

E.1 Funding of corporate organizations

A foreign corporation can fund its Indian subsidiary through various options. The primary options are discussed below:

E.1.1 Equity share capital

Issuing equity shares is the conventional means of funding a domestic Indian subsidiary.

The amount of equity capital a company can issue is limited by the authorized capital specified in its Memorandum of Association. It can increase its authorized capital (including bonus or rights issues) to existing holders, but only if permitted by its Articles of Association. Equity capital can be repatriated on liquidation or transfer of shares.

The new consolidated FDI policy permits the issue of equity shares under the government route against import of capital goods and pre-incorporations expenses, subject to certain conditions. Equity shares need to be issued by an Indian company within 180 days of receipt of funds from a foreign investor.

A non-resident entity can invest funds in an Indian LLP as a contribution to capital, subject to the conditions prescribed in the FDI. In LLP, capital can be repatriated by withdrawing capital, transferring or assigning partnership interest, or winding up its operations.

E.1.2 Preference share capital

Another option for investors to invest in a company in India is by subscribing to preference share capital. Foreign investments through convertible preference shares, which are fully and compulsorily convertible into equity shares, are treated as FDI. Preference shares that are not compulsorily convertible into equity shares are construed as ECB and need to conform to ECB guidelines.
Fully and compulsorily convertible preference shares need to be issued by an Indian company within 180 days of receipt of funds from a foreign investor. According to India’s Company Law, preference shares have to be redeemed within a period of 20 years, and their issuance is only permissible as a INR-denominated instrument.

The rate of dividends paid to non-residents should not exceed the limit prescribed by the MoF. This is currently fixed at 300 basis points above the State Bank of India’s prime lending rate.

E.1.3 Debentures and borrowings

Companies can raise funds by issuing debentures, bonds and other debt securities. They can also do this by accepting deposits from the public. Debentures can be redeemable; perpetual, bearer or registered, and convertible or non-convertible. Foreign investments in the form of convertible debentures, which are fully and compulsorily convertible into equity shares, are treated as FDI. Debentures that are not compulsorily convertible into equity shares are construed as ECB, and, therefore, need to conform to ECB guidelines (refer to E.1.4).

Compulsorily convertible debentures need to be issued by an Indian company within 180 days of its receiving funds from a foreign investor.

E.1.4 External commercial borrowings

Debts raised in foreign currency by an Indian company (from internationally recognized sources) come within the purview of the definition of ECB, and are regulated by the MoF and the RBI. ECB can be accessed under two routes—the automatic and the approval route.

ECB of up to US$750m for rupee and foreign currency expenditure come under the ambit of the automatic route, subject to compliance with the ECB policy for corporates other than hotels, hospitals and the software sector. ECB of up to US$200m can be availed by corporates in hotels, hospitals and the software sector under the automatic route. Corporates engaged in services other than the ones mentioned above can only avail ECB under the approval route, subject to conditions related to it. ECB can be availed by corporate organizations registered under The Cos Act and infrastructure finance companies, except in the case of financial intermediaries, and must be availed from internationally recognized sources such as international
banks and capital markets, multilateral financial institutions, export credit agencies, suppliers of equipment, foreign collaborators and foreign equity holders (subject to certain minimum equity-holding requirements in the borrower’s company). The proceeds of ECB are subject to end-use restrictions and can be used towards importing capital goods (including services, technical know-how and payment of license fees), new projects, and modernization or expansion of existing production units in the real sector—industrial sectors. Under no circumstances can ECB be used for on-lending investment in a capital market, acquiring a company, repayment of existing rupee loans137 and real estate. ECB can be availed under the approval route from a foreign equity holder (holding minimum paid up equity of 25%) for general corporate purposes. However, the repayment of principal in such cases can commence only after the completion of minimum average maturity of 7 years. In this context, redeemable preference or optionally convertible preference shares, as well as partially convertible preference shares and debentures, are considered as ECB, and, therefore, need to conform to ECB guidelines.

The minimum average maturity period of a loan is three years for a loan amount of up to US$20m. In the case of ECB amounting to more than US$20m and up to US$50m, the minimum average maturity period is five years.

The following are all-in cost ceilings for ECB:

<table>
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<th>Average maturity period</th>
<th>All-in-cost ceiling over six-month London Interbank Offered Rate (LIBOR) applicable up to 31 March 2014</th>
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<td>Three years and up to five years</td>
<td>350 basis points</td>
</tr>
<tr>
<td>More than five years</td>
<td>500 basis points</td>
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Proceeds from ECB can be retained outside India (in prescribed liquid assets) or converted into INR accounts in India, pending their utilization. An empowered committee set up by the RBI decides all the cases outside the purview of the automatic route.

137 However, companies in the manufacturing, infrastructure and hotel sector can avail ECB for repayment of outstanding rupee loans availed for capital expenditure from the domestic banking system, provided they are consistent foreign exchange earners during the past three FYs and are not in the default list of the RBI. Such companies would need to obtain the approval of the RBI and satisfy the prescribed conditions for availing ECB for this purpose. This benefit is also available to Indian companies in the aforesaid sectors that have established a JV or WOS, have acquired assets overseas in compliance with extant regulation, subject to prescribed conditions.
Corporate organizations registered under The Cos Act have been granted general permission to convert ECB in convertible foreign currency into equity shares or fully compulsorily and mandatorily convertible preference shares to CPS, subject to certain conditions and reporting requirements of the FDI policy.

Prepayment of an ECB of up to US$500m is likely to be allowed by AD bankers without obtaining the prior approval of the RBI, subject to its compliance with the stipulated minimum average maturity period applicable for the loan.

**E.1.5 ADRs, GDRs and FCCBs**

Qualifying Indian companies are allowed to raise equity capital overseas by issuing ADRs, GDRs or FCCBs. The company must seek the approval of the FIPB where the issue of ADRs, GDRs or FCCBs by it is likely to increase its permissible FDI investment limits under the automatic route or in cases when an investment is made in the form of a project that requires the Government’s approval.

Investments made through the instruments mentioned above may be through the automatic or the approval route, according to relevant sectoral policy/guidelines.

**E.1.6 Listing of debentures to raise funds**

SEBI-registered FIIs/ QFIs/ Foreign Portfolio Investments are allowed to invest in listed debt securities, subject to terms and conditions in related regulation.

FIIs and QFIs can invest up to US$51b in all corporate and infrastructure bonds.

**E.2 Funding of LLPs**

LLPs are not permitted to avail ECB. Therefore, capital invest is the only mode of funding for LLPs. However, they can pay interest on capital infused by their partners, subject to restrictions under Indian tax laws and terms of approval of the FIPB (where FDI is involved). LLPs can borrow from domestic lenders.
### Repatriation of funds

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Repatriation of funds

F.1 Repatriation of capital by a company

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

Effective 1 June 2013, companies opting to buy out shares are subject to a distribution tax of 22.66% (inclusive of surcharge and cess) in respect of their distributed income (i.e., consideration paid by them on buying back shares reduced by the amount received by them for issuing the shares). Share buybacks are subject to limits applicable under Indian corporate law.

Companies can also repatriate funds to their shareholders (without any limits) by way of a capital-reduction measure. This is, however, a court-driven process.

F.2 Repatriation of dividends

Profits and dividends earned from an Indian company can be repatriated after the payment of DDT\(^{138}\) due on them. RBI’s permission is not required to make remittances, subject to compliance with certain specified conditions.

\(^{138}\) A tax rate of 16.995\% is payable on income distributed as dividends.
F.3 Repatriation of funds by an LLP

Partners of an LLP can freely draw capital according to LLP laws, but this is subject to the terms of the FIPB’s approval in the case of FDI. This is not subject to distribution tax and is also exempt in the hands of partners of LLPs.

Interest on capital can be paid according to LLP laws, subject to the terms of the approval granted by the FIPB. Taxes, if applicable, will have to be withheld on the amount sought to be paid.

F.4.1 Royalties and technical know-how

Indian companies that enter technology transfer agreements with foreign companies are permitted to remit payment for know-how and royalties under the terms of the foreign collaboration agreement, subject to tax withholding, if any, without any limits.

F.4.2 Technical service fees and management service fees

Companies can hire the services of foreign technicians and make remittances for technical service fees, subject to certain conditions, regardless of the duration of the engagement of a foreign national in any calendar year and subject to tax withholding, if any, without any limits.
F.4.3 Consultancy services and pre-incorporation expenses

Consultancy services

Remittance of up to US$1m per project for any consultancy service procured from outside India can be made without obtaining the RBI’s approval. Furthermore, this limit is extended to US$10m per project in respect of infrastructure projects relating to the power, telecommunications, railways, roads (including bridges), seaports and airports, industrial parks and urban infrastructure (water supply, sanitation and sewage projects) sectors.

Pre-incorporation expenses

Remittance on reimbursement of pre-incorporation expenses incurred in India (amounting to up to 5% of investment brought into the country or US$0.1m, whichever is higher, on the basis of certification from statutory auditors) is permitted without the RBI’s approval.

As detailed in sections F.4.1 to F.4.3, cross-border transactions between Indian entities and their associated enterprises situated abroad are subject to transfer pricing regulation. Accordingly, such transactions should be at arm’s length and documentation needs to be maintained in compliance with Indian transfer pricing regulation.
F.5 Other remittances

No prior approval is required to remit profits earned by the Indian branches of companies (other than banks) incorporated outside India to their head offices (also outside the country). Remittances are permitted from the winding-up proceeds of a branch of a foreign company in India, subject to the RBI's approval. In addition, sundry remittances are allowed for certain items, including gifts, repair charges for imported machinery, maintenance and legal expenses, subject to prescribed limits.
Forms of business enterprise

G.1 Sole proprietorship
G.2 Partnerships
Forms of business enterprise

G.1 Sole proprietorship

Sole proprietorship is the oldest and most common form of business activity. It is a one-man organization where an individual owns, manages and controls a business. Sole proprietorship has the following features:

- There is ease of formation because it does not require elaborate legal formalities. There is no formal agreement needed, since it is a one-man organization. In addition, it is not necessary to register such a firm. However, owners of such businesses may be required to obtain a license (specifically relating to their line of business) from the local administration.

- The owner has complete control over all the aspects of the business and makes all the decisions although they may hire employees or support staff for assistance in day-to-day activities.

- Profits or losses resulting from the operation are solely borne by the proprietor.

- There is no legal existence separate from its owner.
· The liability of the proprietor is unlimited, i.e., it extends beyond the capital invested in the business.

· A NRI or a PIO residing outside India is allowed to do business in India as a sole proprietor. However, the person should make investments on a non-repatriation basis, subject to satisfaction of certain other conditions.

· However, an NRI or PIO cannot invest in a proprietary concern, that is engaged in any agricultural or plantation, real estate business or print media sector, even on a non-repatriation basis.

· Furthermore, investments can be either made through inward remittance or out of a Non-resident External Account (NRE) or foreign currency on-resident (Bank) Account (FCNR) accounts maintained with authorized dealers or authorized banks.

· NRIs or PIOs can make investments and avail repatriation benefits after obtaining the approval of the RBI.

· A person residing outside India (other than NRIs or PIOs) can make investments in sole proprietorship concerns after obtaining approval from the RBI.

· AMT is applicable to sole proprietorship from FY13.
G.2 Partnerships

A partnership is defined as a relation between two or more persons who have agreed to share the profits of a business conducted by them or any of them, who is acting for the others. The owners of a partnership business are individually known as partners and collectively as a firm. The main features of a partnership include the following:

- A partnership is easy to form, since no cumbersome legal formalities are mandatory and registration is not essential. However, a firm is deprived of certain legal benefits if it is not registered. The Registrar of Firms is responsible for registering partnership firms.

- A partnership should have a minimum of two partners, and the maximum number can be 10 in the banking sector and 20 in all other types of businesses. Furthermore, specific regulatory approvals are likely to be required in the case of partnership firm engaged in banking operations.

- A partnership firm has no separate legal existence of its own, i.e., the firm and its partners are considered a single entity in the eyes of the law.

- In the absence of any agreement to the contrary, all partners have the right to participate in the activities of the business.

- Ownership of property usually carries with it the right of management. Every partner, therefore, has a right to share in the management of such a business.
• The liability of the partners is unlimited. They are legally considered to be jointly and severally liable for the firm’s liabilities. This means that creditors can recover their loans from the personal properties of individual partners if the assets and property owned by the firm are insufficient to meet its debts.

• There are restrictions on transfer of interest, i.e., partners cannot transfer their interest in the firm to any other person or persons (except to existing partners) without the unanimous consent of all the partners.

• A partnership firm has a limited span of life, i.e., it must be legally dissolved on the retirement, bankruptcy or death of any partner or in the event one of the partners becomes insane.

• An NRI or PIO residing outside India is allowed to invest in a partnership organization in India. However, such investments should be made on a non-repatriable basis, subject to the satisfaction of certain other conditions. However, NRIs or PIOs can make investments in a partnership firm with repatriation benefits after obtaining the approval of the RBI. An NRI or a PIO cannot invest in a partnership concern that is engaged in any agricultural or plantation or real estate business, or in the print media sector.

• A person resident outside India, other NRIs or PIOs can make investments in a partnership firm after obtaining the approval of the RBI or FIPB.

• AMT is applicable to partnership firms from FY13.
Companies

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Companies

H.1 Overview

Companies operating in India, hitherto, were governed and regulated by the provisions of the Cos Act, whereas banking, electricity and insurance companies had to comply with the specific legislations in addition to the Cos Act. The New Cos Act, which replaced the Cos Act, seeks to entirely restructure the way corporates are regulated in India. While the Cos Act is repealed with the enactment of the New Cos Act, provisions of the Cos Act will continue to apply until corresponding provisions in the New Cos Act are formally notified. Only 98 sections have been notified as of 1 November 2013.

While the New Cos Act provides a broad framework, a substantial part of the details of the corporate law regime will be governed by various sets of rules to be promulgated by the Central Government. Therefore, various substantive provisions will become effective only once the respective rules are promulgated. The draft rules under the Companies Act, 2013 (Draft Rules) for various provisions were placed for public comments and expected to be implemented in a phased manner.

The Ministry of Corporate Affairs (MCA) has been entrusted with the responsibility of ensuring compliance with the provisions of the Cos Act and the New Cos Act. The Registrar of Companies (RoC) and the Regional Director are the principal offices that oversee and regulate the function of the MCA. The Company Law Board, which had delegated powers from the MCA to grant approvals as prescribed under the Cos Act, will be replaced by the National Company Law Tribunal (NCLT) under the new regime.

In addition to compliances under the Cos Act and New Cos Act, all listed public companies in India are also regulated by SEBI, a body that regulates companies with a public interest, that are listed on Indian stock exchanges as per the listing agreement and other reporting requirements issued by SEBI.
The New Cos Act is expected to facilitate business-friendly corporate regulation, improve corporate governance norms, enhance accountability on the part of corporates and auditors, raise levels of transparency and protect interests of investors, particularly small investors. The New Cos Act also secures the arbitrage that existed between private and public companies by withdrawing various concessions, exclusions, exemptions available to private companies under the Cos Act in relation to offer of securities, conditions relating to loans and investments by companies, and repatriation of capital and returns, which could change the way investments were made under the Cos Act. Furthermore, additional layers of governance, such as vigil mechanism, conditions as to the appointment of independent directors, etc., have been prescribed for both listed and unlisted companies.

H.1.1 Types of companies

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

A company that is established for a charitable purpose can be formed under the provisions of Section 25 of the Cos Act (Section 8 of the 2013 Act). The profit generated from the activities of such a corporation is not allowed to be distributed to its members, but must be used for the purpose for which it was established. The corresponding provisions under the New Cos Act are not yet notified.

Private companies

A private company under the New Cos Act\(^{139}\) is required to have a minimum paid-up capital of INR0.1m (US$1,620), two directors and two members, with a maximum of 200 members. The right to transfer shares is restricted for a private company. Also, no public offer can be made to subscribe in the company’s securities.

\(^{139}\) The definition of a private limited company has been notified as effective from 12 September 2013.
Public companies

A public company is defined as one that is not a private company. A private company that is a subsidiary of an Indian public company is also treated as a public company. A public company is required to have a minimum paid-up capital of INR0.5m (US$8,100), with a minimum of seven members and three directors.

The following are some basic comparisons between private and public companies:

<table>
<thead>
<tr>
<th>Sl no</th>
<th>Particulars</th>
<th>Private company</th>
<th>Public company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Minimum number of members</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>2.</td>
<td>Maximum number of members</td>
<td>200</td>
<td>Unlimited</td>
</tr>
<tr>
<td>3.</td>
<td>Minimum number of directors</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>4.</td>
<td>Maximum number of directors(^\text{140})</td>
<td>According to the Articles of Association (AOA) of the company</td>
<td>12 (can be increased with Central Government approval)</td>
</tr>
<tr>
<td>5.</td>
<td>Minimum paid-up capital requirement in general</td>
<td>INR0.1m (US$1,620)</td>
<td>INR0.5m (US$8,100)</td>
</tr>
<tr>
<td>6.</td>
<td>Managerial remuneration</td>
<td>Payable with approval of the board of directors in accordance with the AOA of the company</td>
<td>Approval of the Central Government is required if the remuneration payable is beyond the limits specified under the Cos Act. This provision does not apply where remuneration is payable to a qualified expert and prescribed conditions are satisfied.</td>
</tr>
</tbody>
</table>

In addition to private and public companies, the New Cos Act has introduced the following two categories of companies:

- One Person Company (OPC): a new vehicle for individuals (Indian citizens and residents) for conducting business with limited liability. The word OPC is required to be affixed at the end of the name of the company.
- Small company: a company, other than a public company, with a paid-up share capital not exceeding INR0.5m (US$8,100) or whose prescribed amount or turnover does not exceed INR20m (US$323,940) or a higher amount as may be prescribed.

\(^{140}\) The maximum number of the directors has been increased from 12 to 15 as per the New Cos Act for both private and public companies. However, any company can increase the number of directors beyond 15 by way of passing special resolution.
Given the less complex structures, OPCs and small companies are exempted from certain reporting requirements and the appointment of key managerial personnel.

**H.1.2 Share capital**

The Cos Act permits companies to issue two kinds of shares to its members – equity shares (common stock) and preference shares (preferred stock). Equity share capital with differential rights as to dividend, voting or otherwise can be issued, subject to prescribed conditions and rules.

Capital issued by public listed companies needs to comply with the guidelines of SEBI and the listing agreement.

**H.1.3 Board of directors**

The management of a company is entrusted to its board of directors. The board acts on behalf of the company’s members and has the overall responsibility for its business activities and day-to-day operations. It seeks the confirmation and approval of the company’s members on major decisions. The Cos Act and New Cos Act prescribes additional restrictions on the powers of the board of public companies.

Furthermore, members can restrict the powers of the board by passing specific resolutions. The board may also delegate its powers to a committee of directors or managing director by passing resolutions to this effect.

The board may transact business through written consent, subject to certain transactions that are mandatorily required to be taken up only in the board meetings. However, the board is required to meet every three months, i.e., at least four board meetings in a calendar year.

*Key new provisions introduced in the New Cos Act*

- Mandatory compliance with secretarial standards on general and board meetings specified by the Institute of Company Secretaries of India (a recognized professional body in India to develop and regulate the profession of Company Secretary) and approved by the Central Government
Mandatory four board meetings to be held in a year and not more than 120 days shall intervene between two consecutive board meetings.

H.1.4 Directors

A company can appoint executive, non-executive and independent directors. An executive director can be a managing director or a whole-time director.

Every person who is to be appointed as director in a company is mandatorily required to obtain a Director Identification Number (DIN). A DIN is a unique identification number allotted to an individual who is to be appointed as a director. The process of allotment of a DIN has been simplified by the MCA and can take place online on payment of a nominal fee.

Whole-time and Managing Directors

Every public company or a private company, that is a subsidiary of a public company with a paid-up share capital of INR50m (US$810,000) is required mandatorily to appoint a managing director or a whole-time director. The Cos Act prescribes certain conditions that need to be fulfilled for the appointment of a managing director or a whole-time director. If the conditions are not complied with, the company is required to obtain approval from the Central Government to make such appointment.

In the case of a private company, there is no mandatory paid-up capital criterion for appointing a whole-time or managing director, and such an appointment is governed by the AOA for a private company.

Independent directors

The provisions relating to independent directors are applicable for listed public companies. The limits prescribed for these independent directors range from one-half to one-third, depending on whether the company has an executive chairman. The concept of independent directors has been created to exert external control on the operations of a company and safeguard the interest of the public.
Key new provisions introduced in the New Cos Act

- Limit enhanced —the limit for appointment of directors has been set at 15 and will be applicable to all companies. For any further increase in the number of directors, a company will need to pass a special resolution at its general meeting. There will not be any need to obtain an approval from the Central Government.

- Resident director —each company will need to have a minimum of one director who stayed in India for at least 182 days in the previous calendar year.

- Women directors - the New Cos Act requires prescribed class of companies to have at least one woman director on the board. Existing companies will be given a one-year transition period to comply with this requirement.

- Independent directors - every listed company must have at least one-third of the total number of the directors as independent directors, with any fraction to be rounded off as one. The Central Government will have the power to prescribe the minimum number of independent directors in the other class of public companies. The New Cos Act lays down various restrictions, on the individual as well as their relatives, for being eligible to be appointed as an independent director.

Key managerial personnel (KMP) —The New Cos Act defines KMP in relation to a company as the chief executive officer, or the managing director or the manager, the company secretary, the whole-time director, the CFO, and such other officer as may be prescribed (no other officer has been prescribed under the draft rules), and mandates every listed company and companies (both public and private) having a paid-up capital of INR50m (US$810,000) to appoint KMP.

H.1.5 General meetings

The Cos Act requires companies to hold meetings at regular intervals and pass resolutions, ordinary or special, according to requirements specified therein. A company is required to hold at least one members’ meeting at an Annual General Meeting (AGM) in an FY as per the requirements specified under the Cos Act.
Any meeting of members called between two AGMs is known as an extraordinary general meeting. Every company is required to annex an explanatory statement to the notice a general meeting if special business is transacted.

Key new provisions introduced in the New Cos Act

- The first AGM of a company has to be convened within 9 months from the end of the first FY.
- An FY has been defined as April to March in the New Cos Act. A holding or subsidiary of a company incorporated outside India that is required to follow a different FY for consolidation of its financial statement outside India may follow a different FY subject to the approval of the NCLT.
- An AGM may be called during business hours, i.e., between Indian Standard Time 9:00 and 18:00, on any day (including public holidays) other than a national holiday.

H.1.6 Dividend payment

The Cos Act and New Cos Act states that a company will not declare or pay dividend for any FY except:

a. Out of the profits of the company for that year after depreciation;

b. Out of the accumulated profits for any previous FY(s) arrived at after providing for depreciation;

c. Out of both;

d. Out of money provided by Central Government or State Government for payment of dividend in pursuance of any guarantee given by them

Currently, a company needs to transfer a prescribed percentage of its profits to reserves if it declares dividend at a rate exceeding 10%. However, it is allowed to transfer an increased amount to reserves, subject to compliance with the prescribed rules.

The interim dividend can be declared and paid by the directors, subject to the financial review of operations during the relevant period. However, the final dividend can be only recommended by the board and requires the approval of members.
Key new provisions introduced in the New Cos Act

The company may, before declaration of any dividend in any FY, transfer such percentage of its profits for that FY as it may consider appropriate to the reserves of the company. Hence, the matter has now been left to the discretion of respective companies.

H.2 Financial reporting and auditing

The Institute of Chartered Accountants of India (ICAI) issues accounting standards that are to be followed by all entities engaged in commercial, industrial or business activities. The Central Government communicates the accounting standards issued by the ICAI under the Companies (Accounting Standards) Rules, with a view to provide a legal status to accounting standards. The ICAI has issued 32 accounting standards, out of which one — AS 8 Accounting for Research and Development — is withdrawn. Out of the remaining 31 standards, 28 standards have been notified under the Companies (Accounting Standards) Rules and are mandatory.

The ICAI also issues guidance notes and standards on auditing, which are primarily designed to guide auditors during the course of their professional work. In addition, certain statutes and regulatory bodies also prescribe accounting “treatment” that needs to be complied with by the respective entities. For example, the Revised Schedule VI of the Cos Act includes requirements relating to the presentation of financial statements by companies. Similarly, the RBI has issued various circulars that deal with the specific aspects of accounting by banks, NBFCs, etc.

Statutes and bodies governing reporting requirements

The ICAI, the National Advisory Committee on Accounting Standards (NACAS), SEBI, the Cos Act/New Cos Act and the IT Act primarily govern the financial reporting requirements of companies in India. In addition, the Central Government also governs financial reporting requirements through special Acts and orders. The ICAI has clarified in its Preface to the Statements of Accounting Standards that, if it is found that a particular accounting standard is not in conformity with the law, the provisions of the said law will prevail and the financial statements will need to be prepared in conformity with this law.
Key new provisions introduced in the New Cos Act

- The National Financial Reporting Authority (NFRA) will replace the NACAS constituted to advise the Central Government on the formulation of accounting policies and accounting standards for adoption by companies under the New Cos Act.

- The NFRA shall mainly:
  
  i. Advise/recommend to the Central Government on the formulation and laying down of accounting and auditing policies, and standards for adoption by companies or class of companies or their auditors, as the case may be

  ii. Monitor and enforce the compliance with accounting standards and auditing standards in such a manner as may be prescribed

  iii. Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for the improvement in quality of services and such other related matters as may be prescribed

  iv. Perform such other functions relating to clauses (i), (ii) and (iii) as may be prescribed

- The NFRA will be vested with the same powers as vested in a civil court under the Code of Civil Procedure, 1908.

H.2.1 Sources of accounting standards and convergence with International Financial Reporting Standards

India’s accounting standards are based on International Accounting Standards (IAS), now renamed International Financial Reporting Standards (IFRS). Phase 1 entities were preparing to converge with IFRS with effect from 1 April 2011. To fulfil this, the MCA notified 35 Indian Accounting Standards equivalent to the IFRS (Ind-AS). Furthermore, the MCA stated that the notified Ind-AS will be applied in a phased manner after the resolution of various issues, including tax-related ones. This indicates that Ind-AS is not likely to apply from the dates announced in the original road map and, at the same time, the date of applicability is not fixed and is made subject to satisfactory resolution of tax issues. Pending resolution of some tax-related issues, this has been postponed and no effective date has been notified yet. The Central Government is in the process of finalizing Ind-AS.
H.2.2 Significant fundamental concepts

Accounting methodology

The fundamental accounting assumptions of efficiently operating businesses, as well as consistency and accrual of income and expenses, need not be disclosed in financial statements. Departures from these basic concepts must, however, be disclosed.

All significant accounting policies should be disclosed in one separate statement or schedule in financial statements. Inflation accounting is not a practice in India; accounts are prepared on the basis of traditional cost-accounting conventions.

Change in accounting policy

A company can change an accounting policy to comply with a statute or accounting standard, or if it feels that the change will result in a more appropriate presentation of its financial statements. The new policy should be followed consistently. A description of the change and the reasons for it should be disclosed in the entity’s financial statements during the year of the change.

Audit requirements

All companies, banks and financial institutions must have their accounts audited by an auditor who is a practicing member of the ICAI. The branches of a company also need to be audited.

The first auditor of the company may be appointed by its directors within 30 days from the date of incorporation. On failure to so appoint, the first auditor is appointed by the members. The members also appoint subsequent auditors at every AGM and fix their remuneration. The Cos Act sets out that, if the paid-up capital and reserves exceed INR5m (US$81,000) at the commencement of the FY or the average annual sales are above INR50m (US$810,000) for three consecutive FYs immediately preceding the relevant FY, the company is required to comment on the internal audit system of companies.

The Central Government requires certain manufacturers to maintain their cost accounts and can order an audit by a qualified cost auditor to conduct this procedure.
Key new provisions introduced in the New Cos Act

- Under the New Cos Act, a company will appoint an auditor at its first AGM, and this auditor will hold office for a period of five years until the conclusion of the sixth AGM. Though the auditor will be appointed for five years, the matter relating to such an appointment will be placed for ratification at each AGM.

Some key audits required under other legislations

Tax audit under the IT Act

All companies with gross revenues in excess of INR10m (US$161,970) must have their accounts audited under the IT Act. The Cos Act also grants the Central Government the power to order other audits, including cost audits and investigations.

Value Added Tax (VAT) audit

VAT legislation requires a VAT audit certificate or report to be issued by a chartered accountant in a prescribed format. The format for each state is different, but has the same requirements. The due date for signing a VAT audit report or certificate varies from state to state and ranges between the months of September and December.

Generally, VAT audit is applicable for all dealers who are liable to pay VAT, provided their sale or purchase turnover exceeds a specified limit. Furthermore, audit of VAT is also mandatory for specified categories of dealers, as prescribed by state legislation.
H.2.3 Disclosure, reporting and filing requirements

Disclosure requirements

Financial statements should include the following:

a. Balance sheet
b. Statement of profit and loss account
c. Notes to the financial statement
d. Cash flow statement
   (not required for small and medium-sized entities)

The balance sheet and the statement of profit and loss account should have all the disclosures required to provide a true and fair view of the entity’s financial position and the details of its operations.

Companies are also required to disclose their basic and diluted earnings per share along with their accounting policy and method of computation. However, organizations classified as small and medium-sized enterprises are not required to disclose their diluted earnings per share.

Financial statements must be signed and dated by the manager or the company secretary of the company, if any, and by at least two directors, including a managing director, if any, and also the statutory auditor.

Boards’ report: the boards’ report must accompany each set of financial statements and contain certain prescribed information, including a separate section on corporate governance with a detailed compliance report on it (for listed companies). Non-compliance with any mandatory requirement and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted, with reasons thereof.

Auditors’ report: the auditors’ report must include an opinion on the financial statements of the company and must state whether the company and its branches have maintained their books of account as required under the Cos Act, and whether these books agree with its balance sheet and statement of profit and loss account.
In addition the auditors are also required to report matters stated in the Companies (Auditor’s Report) Order, 2003 issued by the Central Government, which includes inter alia reporting on various specific aspects of internal control, inventory valuation, payment of statutory dues, description of contingent or contested liabilities or fraudulent transactions by or on the company, and utilization of long-term/short-term funds.

The ICAI has recently revised SA 700, forming an Opinion and Reporting on Financial Statements, and issued SA 705, Modification to the Opinion in the Independent Auditor’s Report and SA 706, the Emphasis of Matter Paragraphs and Others Matters Paragraphs in the Independent Auditor’s Report. These standards provide a new format of audit opinion and guidance on preparation of an audit report, including modifications thereof.

E-filing of audit reports has also been made mandatory for companies.

Key new provisions introduced in the New Cos Act

- Financial statements — a new definition for financial statements has been introduced to include:
  a. Balance sheet as at the end of the FY
  b. Profit and loss account for the FY
  c. Cash flow statement for the FY
  d. Statement of change in equity, if applicable
  e. Any explanatory notes forming part of the above statements

Therefore, the addition in the New Cos Act is the statement of change in equity, if applicable in the term “financial statements.”

- For OPCs, small companies and dormant companies, financial statements may not include the cash flow statement.

- Consolidated Financial Statement (CFS) – currently, only the listing agreement mandates listed companies to publish CFSs. Under the New Cos Act, all companies, including unlisted and private companies, with one or more subsidiaries will need to prepare CFSs in the same form and manner as stand-alone financial statements.
Interim financial reporting requirements for listed entities

**Quarterly financial statement:** each listed entity is required to provide its unaudited financial results on a quarterly basis, within 45 days from the end of a quarter, in the specified format, announce this in the newspapers and subject the results to a limited review by its statutory auditors. A listed company is required to clarify to the stock exchange if there is a variation between unaudited quarterly or year-to-date financial results and results amended pursuant to limited review for the same period, with respect to net profit or loss after tax or exceptional or extraordinary items provided in the format varying by 10% or INR1m (US$16,197), whichever is higher.

Secretarial audit: listed companies are to subject themselves to a secretarial audit that is to be undertaken by a qualified chartered accountant or a company secretary for the purpose of reconciliation of the total admitted capital with the depositories and the total issued and listed capital. Listed companies are to submit their audit reports on a quarterly basis to the stock exchange(s) where they are listed. Any difference observed in the admitted, issued and listed capital will immediately be brought to the notice of the SEBI and both the depositories by the stock exchanges.

**Annual reporting requirements**

Companies are required to comply with various reporting requirements, which are higher for public companies than for private companies. Significant documents that need to be filed include annual returns, balance sheets and, statements of profit and loss accounts, as well as auditors’ and directors’ reports. The formats of the balance sheets and the statements of profit and loss accounts are prescribed by the Cos Act.

Annual financial statements must be sent to all members and debenture holders at least 21 days in advance in the case of a public company. A private limited company is required to follow the AOA regarding the notice period for calling the AGM. As per the New Cos Act, at least 21 days in advance is required to be given by all companies. Listed companies must send their annual financial statements to the stock exchanges on which they are listed in addition to publishing their quarterly financial statements.
Annual filings

As per the Cos Act, after annual financial statements have been presented at the AGM, copies must be electronically filed with the RoC within 30 days from the date of the AGM, followed by the filing of annual returns within 60 days from the date of the AGM.

Further, the following class of companies are required to file their balance sheets and profit and loss accounts in the XBRL format based on the taxonomy (XBRL) developed and notified by the Central Government as per the due date prescribed by the Central Government:

- All public companies listed in a stock exchange in India and their Indian subsidiaries
- All private companies with a turnover of INR1,000m (US$16.19m) or more paid-up capital of INR50m (US$810,000) or more (other than banking, insurance and power companies, and NBFCs)

Similar provisions exists in the New Cos Act however, these have not yet been notified.
H.3 Corporate Social Responsibility

The concept of Corporate Social Responsibility has been introduced as a corporate obligation and statutory status in the New Cos Act.

- Every company with net worth of INR5,000m (US$81m) or more, or a turnover of INR10,000m (US$161.97m) or more or a net profit of INR 50m (US$810,000) or more, during any FY is required to constitute a CSR Committee.
- The CSR Committee will consists of three or more directors, which at least will be an independent director.
- The CSR committee will:
  a. Formulate and recommend to the board a CSR policy that shall indicate the activities to be undertaken by the company
  b. Recommend the amount of expenditure to be incurred on the activities referred to in the CSR policy
  c. Monitor the CSR policy from time to time
- The board of the companies is required to ensure that the company spends, in every FY, at least 2% of the average net profits of the company made during the three immediately preceding FY’s. For this purpose, the average net profit will be calculated in accordance with the New Cos Act. If a company fails to spend such an amount, the board is required in its report to specify the reasons for not spending the amount.
- The board is required to approve the CSR policy, disclose its contents in the board report and place it on the company’s website.
- Schedule VII of the New Cos Act sets out the activities that may be included by companies in their CSR policies. These activities relate to (a) eradicating extreme hunger and poverty, (b) promotion of education, (c) promoting gender equality and empowering women, (d) reducing child mortality and improving maternal health, (e) combating HIV, AIDs, malaria and other diseases (f) ensuring environmental sustainability, (g) employment enhancing vocational skills (h) social business projects, (i) contribution to certain funds, such as the Prime Minister’s National Relief Fund, and other matters that may be prescribed.
### Economic laws and regulation

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Economic laws and regulation

I.1 Indian Contract Act, 1872

The Indian law that governs contracts is codified as the India Contract Act, which encapsulates provisions governing the entire life of a contract—from its formation to its implementation and conclusion. The ICA also provides remedies for breach of contract. Through subsequent amendments, the provisions relating to certain specific forms of contract, including contract of partnership, contract of carriage and contract for sale of goods, have been removed from the ICA and enacted in a separate legislation.

I.2 Protection of intellectual property rights

Laws relating to intellectual property are still in the process of transition in India and are becoming harmonized with corresponding laws in developed countries.

As a signatory to the GATT and Trade Related Aspects of Intellectual Property Rights (TRIPS) agreements, and in its capacity of being a member of the WTO, India is required to lay down minimum norms and standards with respect to the following areas of intellectual property:

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

I.2.1 Copyrights

India’s Copyright Law, laid down in the Indian Copyright Act, 1957 and amended by the Copyright (Amendment) Act, 2012, fully reflects the Berne Convention on copyrights to which India is a party. India is also a party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and to the Universal Copyright Convention. India is an active member of the World Intellectual Property Organisation (WIPO) at Geneva as well.
According to the Copyright Act, 1957, copyright subsists in original literary, dramatic, musical and artistic work, a cinematographic film or a sound recording.

The Indian copyright law has been amended regularly to keep pace with changing requirements. The amendments made to copyright laws have resulted in comprehensive changes and brought them in line with new developments in satellite broadcasting, computer software and digital technology. Furthermore, the Copyright Amendment Act, 2012 amends the copyright law to protect rights of authors of lyrics, musical works, etc., and also makes certain changes in the law relating to compulsory licensing and statutory licensing.

The amendment to the Copyright Act in 2012 necessitated an amendment of the Copyright Rules, 1958. The amended Copyright Rules were notified on 14 March 2013 and have come into effect therewith.

The amended rules provide for statutory licenses for cover versions and broadcasting of literary and musical works and sound recording, and compulsory licenses for works withheld from the public, whether unpublished or published works, for the benefit of disabled. They also provide for the registration of copyright societies and performers’ rights societies, storage of transient or incidental copies of works, making or adapting the work by organizations working for the benefit of persons with disabilities, and importation of infringing copies and technological protection measures. Under the amended rules, the fee for registration of copyright for various works and the fee for licenses to be issued by register of copyrights has been enhanced.

Several measures have been adopted to strengthen and streamline the enforcement of copyright protection. These include setting up a Copyright Enforcement Advisory Council, conducting training programs for enforcement officers and setting up special police cells to deal with cases related to infringement of copyright.
I.2.2 Trademarks

The Trade Marks Act, 1999 (TM Act) and the Trade Marks Rules, 2002 governs the law relating to trademarks in India. The TM Act provides for the registration of trademarks for services and goods, including collective marks, and for the assignment and transmission of trademarks. Under the TM Act, a trademark is a mark that can be represented graphically and can distinguish the goods or services of one person from those of others.

There is a provision for an appellate board for the speedy disposal of appeals, rectification of applications and simplification of procedures to register a user. This provision also enables extension of the scope of the permitted use of trademarks, as well as prohibition on the use of another entity’s trademarks as part of a corporate name or the name of a business facility.

The TM Act also provides for the incorporation of other provisions, for instance, the amendment in the definition of “marks,” provision for filing a single application for registration in more than one class, a 10-year period for the registration and renewal of Trade Marks as well as to make the trademarks offense cognizable. The Trade Marks Rules were implemented on 26 February 2002.

The Controller General of Patents, Trade Marks and Designs has been appointed by the GOI to administer various provisions of the TM Act. According to the provisions of the TM Act, and with the objective of fulfilling the obligations of WTO agreements and other treaties entered by India, the Act grants the holder of a foreign trademark the right to register a trademark in India.

I.2.3 Geographical Indications of Goods (Registration and Protection) Act, 1999

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) was implemented in December 1999 and the Geographical Indications of Goods (Registration and Protection) Rules under the GI Act was put in effect in March 2002.
The GI Act has been introduced to ensure compliance with the TRIPS regime. It seeks to provide for the registration and enhanced protection of geographical indications related to goods in India, and is designed to protect the use of such geographical indications from infringement by others and to protect consumers from deception. The GOI has established the Geographical Indications Registry, with all-India jurisdiction, at Chennai in Tamil Nadu, where right-holders can register their geographical indications.

I.2.4 Patents

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.

The Indian Patents Act, 1970 and the Patent Rules, 1972 were amended by the Patents (Amendment) Act and Rules, 1999. The main objectives of these amendments was to grant product patents for inventions related to drugs and medicines and to outline the procedure to deal with claims made in applications filed on or after 1 January 1995. The Indian Patents Act, 1970 was modified through the amendment of 2005, resulting in India recognizing products, as well as processes, as patentable property.

The issue of patentability of drugs under the Indian Patents Act, 1970, following the amendment of 2005, was settled by the Supreme Court in the case of Novartis AG vs. Union of India141 in April 2013. The law currently holds that the mere change of form (of a drug) with properties inherent to that form does not qualify as enhancement of the efficacy of a known substance, and hence does not qualify as an invention that is patentable. Efficacy in the case of drugs has been understood in terms of therapeutic value, i.e., the ability of the drug to bring about beneficial change. It is pertinent to note that there is no bar on patentability of incremental inventions of chemical and pharmaceutical substances. The Supreme Court has, however, held that the question of patentability of such products today is to be determined on a case-to-case basis.

141 Civil appeal no 2706-2716 of 2013.
It is pertinent to note that India also recognizes the concept of “compulsory licensing” of patents, under which the Controller of Patents can permit an interested party to commercially exploit the patent for a period of three years after being granted.

To harmonize the law pertaining to patents and other forms of intellectual property, and to fulfil its obligations under the WTO agreement, India has become an active party in the International Convention for the Protection of Industrial Property (Paris Convention) and the GATT and TRIPS agreements.

I.2.5 Designs Act, 2000

The Designs Act, 2000, passed to provide recognition to obligations under WTO agreements, encourages and protects those who produce new and original designs, and seeks to enhance industrial development and competitive progress. The purpose of the Designs Act and the Design Rules, 2001 is to protect novel designs formulated with the object of applying them to specific articles, to be manufactured and marketed commercially for a specific period of time, from the date of registration.

Under the Designs Act, designs are protected by two legal rights: registered designs and artistic copyright. Design registration in India gives the owner a monopoly on their product, i.e., the right (for a limited period) to stop others from making, using or selling the product without the owner’s permission. This is in addition to any design right or copyright protection that may exist automatically in the design.

The Controller General of Patents, Designs and Trademarks, appointed under the Trade and Merchandise Marks Act, 1958, is the Controller of Designs and is responsible for administering the various provisions of the Act.
I.3 Labor laws

India is a member of the International Labour Organization (ILO) and complies with the conventions it has ratified. It has enacted comprehensive legislations to provide a good working environment for human labor and protect their interests.

In the following subsections, the key labor laws applicable to employers and employees in India have been outlined.

I.3.1 Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 (IDA) is the main legislation in India that provides for the investigation and settlement of industrial disputes. Disputes or differences between employers and employers, employers and employees or employees and employees, that relate to employment or non-employment, the terms of employment or conditions of labor of any person have been defined as industrial disputes. The IDA is administered by the Ministry of Labor and Employment through its Industrial Relations Division.

The IDA provides the conditions to lay off, retrench, discharge or dismiss an employee; circumstances under which an industrial unit can be closed down; and situations when a lock-out can be lawfully resorted to and when it can be declared as unlawful. Additionally, the IDA prescribes penalties for any person who indulges in unfair labor practices. Recently, the grievance redressal machinery has also been incorporated under the provisions of the IDA.
I.3.2 Trade Unions Act, 1926

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

The TUA was amended in 2001, bringing about some critical changes in the original legislation. Pursuant to the amendment, no trade union of workmen can be registered unless at least 10% or 100 workmen, whichever is less, subject to a minimum of 7 workmen engaged or employed in the establishment or industry with which it is connected, are the members of such a trade union on the date of making an application for registration. Additionally, to promote the civil and political interest of its members, unions are now authorized to set up separate political funds.

I.3.3 Plantation Labour Act, 1951

The Plantation Labour Act, 1951 (PLA) provides for the welfare and safety of plantation labor and regulates the condition of work in plantations. PLA is administered by state governments and is applied to any land used as plantations, that measures 5 hectares or more and in which 15 or more persons are working. The state governments are, however, free to declare any plantation land less than 5 hectares or with less than 15 persons working on it to be covered by the PLA. Furthermore, it prohibits employment of children in any plantation.

I.3.4 Payment of Bonus Act, 1965

The Payment of Bonus Act, 1965 (PBA) provides for the payment of bonuses to persons employed in certain establishments on the basis of profits or on production or productivity, as well as for matters connected therewith. The PBA is applicable to every factory and other establishments in which 20 or more persons are employed on any day during an accounting year, excluding some categories of employees enumerated therein. The PBA mandates the payment of bonuses to every employee in an accounting year in accordance with the provisions of this legislation, provided that they have worked in the establishment for no less than 30 days.
The PBA provides for the appointment of inspectors by the GOI by notification. These inspectors can ask the employer to furnish any information that is likely to be considered necessary by them. They can also ask the employer to submit books, registers and other documents related to the employment of persons or relating to the payment of salaries, wages or bonus.

Penalties are prescribed for contravention of the provisions of the PBA rules or failure to comply with the directions or requisitions made under the PBA.

I.3.5 Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 (PGA) provides a scheme for the payment of gratuity to all employees earning wages to do any skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are expressed or implied, and whether or not such employees are employed in a managerial or administrative capacity. The PGA is applicable to every factory and to such other establishments in which 10 or more persons are or were employed on any day during the preceding 12 months.

Gratuity is payable to an employee on their retirement or resignation, or termination of service on account of death or disablement due to accident or illness. Gratuity is payable at the rate of 15 days’ wages for every completed year of service, or part thereof, in excess of 6 months. There is a wage ceiling of INR1m on the amount of the gratuity payable to an eligible employee.

The PGA lays down conditions under which an employer can deny payment or forfeit the gratuity of an employee. It also prescribes penalties and prosecutions for contravention of the provisions of the PGA.

I.3.6 Workmen’s Compensation Act, 1923

The object of the Workmen’s Compensation Act, 1923 (WCA) is to compensate an employee or their survivors in the event of industrial accidents or occupational diseases resulting in disablement or death during the course of the person’s employment.

The WCA also prescribes conditions under which compensation can be denied to an employee.
I.3.7 Industrial Employment (Standing Orders) Act, 1946

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

The Industrial Employment (Standing Orders) Central Rules, 1946 provides model standing orders with respect to the classification of workmen, holidays, shifts, payment of wages, leave, termination of service, etc.

I.3.8 Minimum Wages Act, 1948

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

I.3.9 Payment of Wages Act, 1936

The Payment of Wages Act, 1936 (PWA) seeks to regulate the payment of wages to certain classes of employees in an industry. It seeks to ensure that the wages payable to employees covered under the PWA are disbursed by the employers within the prescribed time limit without any unauthorized deductions.

The PWA lays down that a wage period exceeding one month should not be fixed and payment of wages must be made on a specific day after the last day of the wage period. All wages must be paid in current legal tender, but it can also be paid by cheque or credited to the bank account of the employed persons. The main beneficiaries of the PWA are, however, those who earn wages below the prescribed limit per month.
Under the PWA, defaulting employers are advised to pay full wages on time, and in the event of non-adherence to this advice, there are provisions of prosecutions as well.

I.3.10 Factories Act, 1948

The Factories Act, 1948 (FA) extends to the whole of India, and is the principal legislation that governs the health, safety and welfare of factory workers. Many amendments have been made with the aim to keep the FA in tune with developments in the field of health and safety. However, it was not until 1987 that the elements of occupational health, and safety, as well as the prevention and protection of workers employed in hazardous processes, were fully incorporated in the FA.

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

The FA is enforced by state governments through their factory inspectors. The Directorate General Factory Advice Service and Labour Institute functions as a technical arm of the Ministry of Labour and Employment to coordinate matters relating to the safety, health and welfare of workers in factories with state governments.

I.3.11 Employees’ Provident Fund and Miscellaneous Provisions Act, 1952

The Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (EPFMPA) seeks to ensure the financial security of employees in an establishment by providing a system of compulsory savings. A provident fund, required to be established under the EPFMPA, is a contributory fund created to secure the future of employees after their retirement. Employees are also allowed to withdraw a part of their provident fund before retirement for certain specified purposes.

The EPFMPA is regulated by the Ministry of Labour and Employment, but is administered by a representative body called the Central Board of Trustees, Employees’ Provident Fund.

The GOI has prescribed various penalties for any default that the employer is likely to make with relation to payments, including contributions, arrears, accumulation and administrative charges to the fund, and also prescribes imprisonment.
The latest amendment of 1 October 2008 has extended the applicability of the EPFMPA and the schemes therein for an additional category of employees, i.e., international workers, mandating compulsory participation of such employees.

I.3.12 Maternity Benefit Act, 1961

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

I.3.13 Employees’ State Insurance Act, 1948

The Employees’ State Insurance Act, 1948 (ESI) is another social welfare legislation in India that is jointly administered by the GOI and state governments. The ESI provides health care and cash benefits to employees in the event of sickness, maternity or injury suffered during employment, whether they are working in a factory, establishment or elsewhere, or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with a factory or establishment. The ESI scheme is applicable to factories using power and employing 10 or more persons, as well as factories not using power and certain other establishments employing 20 or more persons.
I.3.14 Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) was promulgated to regulate the employment of contract labor in certain establishments and to provide for its abolition in certain circumstances as well as for matters connected therewith. A workman is deemed to be employed in contract labor when they are hired in connection with the work of an establishment or through a contractor.

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

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

Many companies have successfully used the voluntary retirement scheme in an effort to restructure their operations or to exit from a particular line of business. Retraining schemes for workers have also been used to increase their productivity and competitiveness.
I.4 Anti-trust regulation

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

- The Competition Act, 2002 (No. XII of 2003), which has repealed\(^1\) and replaced the previous The Monopolies and Restrictive Trade Practices Act, 1969
- Certain provisions under The Cos Act
- The Consumer Protection Act, 1986

I.4.1 The Competition Act, 2002

Earlier, India’s anti-trust law was primarily governed by the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). It provided, within its ambit, prohibition for certain restrictive trade practices, unfair trade practices and monopolistic trade practices. These provisions were aimed at preventing the acquisition or takeover of companies to avoid concentration of economic power. Accordingly, the provisions stipulated that certain types of acquisitions will require the prior approval of the GOI.

\(^1\) Vide Notification no. S.O.2204(E) dated 28 August 2009 with effect from 1 September 2009.
However, the primary objective of the MRTP Act was to curb monopolies and not to promote competition. In light of this, the Indian legislature enacted the Competition Act, which repealed and replaced the MRTP Act and seeks to achieve the following objectives:

- Promote and sustain competition in markets
- Protect the interest of consumers
- Ensure freedom of trade carried on by participants in markets in India
- Prevent practices with adverse effect on competition

According to provisions of the Competition Act, the GOI has established the CCI, headquartered in New Delhi, for adjudication on any information or reference against any, anticompetitive practice, along with giving approvals for combinations. The Government has also established the Competition Appellate Tribunal, headquartered in New Delhi with effect from 15 May 2009, to hear and settle appeals against the orders of the CCI and also to adjudicate on the claims of compensation that are likely to arise from the findings of the CCI or the orders of the Appellate Tribunal.

The Competition Act seeks to:

- Prohibit anticompetitive agreements
- Prohibit abuse of dominant position
- Regulate combination (acquisitions, mergers and amalgamations, etc.) that causes or is likely to cause appreciable adverse effect on competition
- Entrust the CCI with the responsibility of undertaking competition advocacy
The CCI had issued the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 (Combination Regulation). These regulation were further amended from time to time. The Combination Regulation, together with the relevant provisions of the Competition Act, regulates in India:

(a) Acquisitions

(b) Acquiring of control

(c) Mergers or amalgamations that exceed specified thresholds

Transactions falling within the purview of the CCI will now require mandatory prenotification to the CCI (subject to the exemptions and transitional provisions as provided in the Combination Regulation) and will not come into effect for 210 days or by order of the CCI, whichever is earlier. According to amended provisions of the Combination Regulation, the CCI has provided relief from mandatory prenotification in the case of intragroup transactions, shares or voting rights acquired through buyback, bonus issue, right issue or share-split, and also increased the maximum cumulative threshold limit from 15% to 25% of total share capital or voting rights. The fee payable to the CCI ranges from INR1m to INR4m. Failure of an enterprise to notify the CCI about the proposed combination can attract a penalty, which can extend up to 1% of the total turnover or the assets of the combination, whichever is higher.
The Combination Regulation was further amended in April 2013. This amendment modified the categories of combinations specified in Schedule I of the Combination Regulation that do not require mandatory prenotification to the CCI. The amendment modifies the following categories of acquisition:

Category 1: an acquirer or its group holding 25% or more but less than 50% of shares or voting rights in an enterprise can acquire additional shares or voting rights in the enterprise – up to 5% in a given FY – provided its shareholding after the acquisition is less than 50% and the acquirer or its group does not control the enterprise as a result of such an acquisition.

Category 5: an acquisition of stock in trade, raw materials, stores and spares, trade receivables and other similar current assets in the ordinary course of business.

Category 8: an intragroup acquisition of shares, voting rights or assets, except where the acquired enterprise is jointly controlled by enterprises that are not a part of the same group (which have to be notified to the CCI).

Category 9: a merger or amalgamation of: (a) two enterprises where one enterprise has more than 50% shares or voting rights in the other enterprise, (b) enterprises in which more than 50% of the shares or voting rights in each of the enterprises are held by enterprises within the same group, except for transactions that result in a transfer from joint control to sole control (which have to be notified to the CCI).
I.4.2 Consumer Protection Act, 1986

The Consumer Protection Act (CP Act) is a legislation that has been enacted for the protection of consumer interest. It provides for the establishment of consumer councils and other authorities to settle consumer disputes. Under the terms of the CP Act, an entity that provides any goods or services in India is required to avoid any trade practice that is likely to be classified as “unfair” or “restrictive,” as defined under the Act.

The CP Act aims to regulate the activities of a manufacturer or service provider to ensure that the consumer does not suffer due to defective goods or deficient services.

The Act includes provisions for district, state and national consumer disputes, redressal forums to adjudicate over claims, complaints and disputes.

I.5 Negotiable Instruments Act, 1881

The law related to promissory notes, bills of exchange, cheques and other negotiable instruments is codified in India under the Negotiable Instruments Act, 1881 (NI Act). The main object of the NI Act is to legalize the system by which the instruments contemplated by it could pass from hand to hand through negotiations, such as in the case of any other goods.

The NI Act provides for the liability of an agent, legal representative, drawer, drawee, maker and acceptor of a bill, an endorser and a holder in due course and surety. Detailed provisions have been made in the NI Act related to presentation, payment, interest, discharge from liability, notice of dishonor, noting and protest, reasonable time for payment, acceptance and payment for honor, and reference in the event of need, compensation, special rules of evidence, providing for certain presumptions and estoppels, cross cheques, bills in sets, etc.

Additionally, it provides a speedy mechanism in cases where cheques are dishonored and criminal and stipulates punitive punishment in such cases.
I.6 Sale of Goods Act, 1930

The Sale of Goods Act, 1930 (SG Act) is complementary to the ICA. The basic provisions of the ICA also apply to the contract of sale of goods. The basic requirements of a contract include offer and acceptance, legally enforceable agreement, mutual consent, parties competent to enter contracts, free consent, lawful object and considerations that apply to the contract of sale of goods.

In a contract of sale of goods, the seller transfers or agrees to transfer the property (ownership) of the goods to the buyer for a price. A sale is an executed contract, i.e., there is a contract, as well as a conveyance. In other words, the property of the goods is transferred from the seller to the buyer.

Certain stipulations are essential for the main purpose of a contract of sale of goods. These are the root of the contract and non-fulfilment means loss of the foundation of contract. These are known as conditions. Other stipulations, which are not essential, are known as warranties. These are collateral to the contract of sale of goods. A contract cannot be avoided for breach of warranty, but the aggrieved party can claim damages.

The SG Act requires that goods transferred by the seller to the buyer must be ascertained and it should be an intention of the seller to pass such goods to the buyer. The SG Act also deals with the transfer of the title of the goods by a person who is not the owner of the goods.

The SG Act entrusts various duties and grants certain rights to both the buyer and the seller, e.g., it is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale.

If goods are sold and property is transferred to the buyer and they refuse to pay for them, the only remedy available to the seller is to approach the court. The seller does not have the right to forcefully take possession of the goods from the buyer once the property of goods is transferred to him. However, some rights have been given to the buyer.
I.7 Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 (A&C Act) has been enacted to replace three previous laws dealing with the various aspects of arbitration. This legislation is based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. The A&C Act has been consolidated into one statute the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and conciliation. It allows the contracting parties to decide on the venue and procedure of the arbitration proceedings.

The A&C Act, has been enacted to meet the following objectives:

- Comprehensively cover domestic arbitration, international commercial arbitration and enforcement of awards under the New York and Geneva Awards and Conciliation
- Make provisions for an arbitral procedure that is fair, efficient and capable of meeting the needs of the specific arbitration
- Provide that the arbitral tribunal reasons for its arbitral award
- Ensure that the arbitral tribunal remains within the limits of its jurisdiction
- Minimize the roles of the courts in the arbitral process
- Permit the arbitral tribunal to use mediation, conciliation or other procedure during the arbitral proceedings to encourage settlement of disputes
- Provide that every final arbitral award is enforced in the same manner as if it were a decree of the court
- Provide the manner of settlement of the conciliation proceedings with respect to disputes arising out of legal relationships, whether contractual or not, and other proceeding relating thereto
- Provide the settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal
• Provide for the establishment of a new arbitration division within each High Court where awards can be challenged under the provisions of the existing act
• Determine the time limit for the disposal of proceedings (pending or future), which is an improvement over the UNCITRAL model
• Resolve the conflicts among some judgments of the High Court under the A&C Act
• Provide for fast-track arbitration following a special procedure

The application of the A&C Act is mandatory for all arbitrations that take place in India. Where a party to the dispute that has been referred for arbitration is Indian and the venue of arbitration is outside the country, the provision of the A&C Act applies, unless the parties have expressly or implicitly rejected its applicability or the rules that govern such arbitration are contrary to its provisions. Under the mandate of the A&C Act, there is limited scope for an appeal being made to an arbitrator.

The ability of the Indian courts to intervene in international commercial arbitrations has been settled by the Supreme Court in the recent landmark judgment of BALCO vs. Kaiser Company.\textsuperscript{144} It has been held that Part I and Part II of the A&C Act are mutually exclusive of each other and cannot be applied interchangeably. The law, as it stands today, is that provisions of Part I of the A&C Act cannot be applied to arbitrations where the seat of the arbitration is situated outside India, and the provisions of Part II of the A&C Act sets out the powers that Indian courts can exercise with respect to international arbitrations. As a result of this judgment, India has reverted to the position that existed prior to the judgment in Bhatia International vs. Bulk Trading S.A. & Anr\textsuperscript{145} and Indian courts are, hereafter, not required to interfere in international arbitrations.

\textsuperscript{144} Civil Appeal 7019 of 2005.
\textsuperscript{145} (2002) 4 SCC 105.
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Mergers and acquisitions

India is emerging as an active player in the world of M&As. M&As continue to be an important tool for inorganic growth, which is evident from the plethora of deals Indian companies have entered in the recent past. In light of The New Cos Act, M&As in India will now be governed by a new regime. Though the provisions governing M&As are not yet effective, the draft rules relating to same have already been released.

J.1 Reorganization and mergers

Reorganization of a company through compromise (sacrifice by shareholders, creditors and others on their claims and entitlements to resurrect the company) or by an arrangement between the company and its shareholders or creditors requires the sanction of the jurisdictional High Court (which would be the National Company Law Tribunal (NCLT) under The New Cos Act). It also requires approval of shareholders, creditors and other regulatory authorities. Additionally, New Cos Act requires notice of a merger to be given to income tax authorities and various regulatory authorities (such as the RBI, the SEBI, the CCI, stock exchanges, etc.) likely to be affected by such a merger. Furthermore, it has introduced provisions for outbound mergers, contractual or fast-track mergers, merger of a listed company with an unlisted company etc., which may widen the scope of reorganizations and mergers.

The Cos Act permits only inbound foreign company mergers. No specific jurisdictions are notified for such inbound mergers, and such mergers are possible where foreign laws permit a transferor foreign company to merge with an Indian company.

The New Cos Act provides for inbound as well as outbound mergers. However, both inbound and outbound mergers are permitted only with a foreign company in notified jurisdictions. Also, such cross-border mergers are subject to prior approval from the RBI. Furthermore, the law is silent on applicability of provisions to demerger.
J.2 Acquisitions

An acquisition entails gaining control over the management of another company, typically through acquiring shares with voting rights. Thus, if the shares of the company are closely held by a small number of persons, an acquisition can be effected in agreement with the shareholders. However, where the shares of the company are largely held by the general public, provisions of the SEBI (Substantial Acquisition of Shares and Takeovers Regulation, 2011 (the Takeover Code), as well as other relevant regulation issued by the SEBI, need to be complied with.

The New Cos Act recognizes the concept of entrenchment provisions in AOA of the company. The New Cos Act also grants legal enforceability to the contract of transfer of securities of a public company, thereby bringing clarity on debate surrounding transfer restrictions in public companies. These provisions are likely to provide an additional layer of protection to investors and acquirers with respect to voting rights and other specific matters such as veto rights and affirmative rights, etc., in relation to a proposed acquisition. Also, this may offer better enforceability to arrangements such as right of first refusal, antidilution, liquidation preference, tag and drag-along rights.

J.3 Demergers

A demerger is a reorganization tool that is increasingly being used by companies to segregate their core and non-core businesses. As in the case of mergers, demergers are also a court-driven processes that require the sanction of jurisdictional High Courts (once new provisions are notified, it would be NCLT), along with the approval of shareholders, creditors and other regulatory authorities. As in the case of mergers, notice of demergers also needs to be given to income tax authorities and various regulatory authorities (such as the RBI, the SEBI, the CCI, stock exchanges, etc.) likely to be affected by such a demerger. It appears provisions relating to contractual/ fast-track mergers also cover demergers.
J.4 Slump sale

A slump sale involves the transfer of an identified business activity from one entity to another for a lump-sum consideration without assigning values to individual assets and liabilities. Unlike a demerger, a slump sale is not mandatorily a court-driven (once new provisions are notified, it would be NCLT) process and can be achieved through a special resolution of shareholders and legal agreements. The New Cos Act lays down thresholds for determining what constitutes a “business activity/undertaking,” which is the subject matter of transfer.

J.5 Buyback of securities

Buyback enables the company to purchase its own securities from its shareholders. The key objectives of buyback are return of excess cash to shareholders, enhancement of promoter stake, capital restructuring, etc. A company is permitted to buyback its share capital up to a ceiling of 10% of the paid-up equity capital and free reserves, provided this is sanctioned in the company’s board meeting. A company is also permitted to buyback up to 25% of its paid-up capital and free reserves, provided the buyback is sanctioned by a special resolution of shareholders’. Under The Cos Act, no offer of buyback (except buyback approved by shareholders, resolution in the case of unlisted companies) could be made within a period of one year from the date of closure of the preceding offer of buyback, if any. Even under The New Cos Act, no offer of buyback shall be made within a period of one year from the date of closure of the preceding offer of buyback, if any, and this applies in all cases, including buyback approved by shareholders, resolution in the case of unlisted companies.
The buyback of securities is subject to certain conditions, such as a bar on the company issuing further shares of the same class for a period of six months and debt-equity ratios, etc. The procedure for affecting a buyback is relatively simple and does not require a court (once new provisions are notified, it would be NCLT) process. Companies listed on a stock exchange in India are subject to the guidelines prescribed by the SEBI in this regard. Private and unlisted public companies are governed by Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999 prescribed in this regard.

J.6 Capital reduction

Capital reduction is a court-regulated process (once new provisions are notified, it would be NCLT) whereby a company can pay off its shareholders by canceling or reducing their capital or canceling their share capital against accumulated losses.

Capital reduction requires the sanction of a court (once new provisions are notified, it would be NCLT) and other regulatory authorities. The process also requires the company to obtain the sanction of various parties whose interest is likely to be affected as a result of the capital reduction scheme.
### J.7 A comparative study of mergers, demergers, slump sales and acquisitions

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| Carryforward of losses | Available¹ | Available¹ | Not available | Available⁶ |

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| Exchange control regulation or FDI guidelines | | |
|-----------------------------------------------|-----------------------------------------------|

| Typical time frame | 4-5 months (assuming court/ NCLT process)¹⁰ | 3-4 months (assuming court/ NCLT process)¹¹ | 1-2 months | 1-2 months |

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1. Subject to fulfilment of certain prescribed conditions; currently, there is no clarity on tax neutrality in the case of fast-track mergers or demergers, as well as cross-border mergers, under New Cos Act
2. Only applicable to listed entities
3. Specific computational methodologies prescribed
4. If shares are issued as a consideration for slump sale
5. Subject to sectoral caps; prior RBI approval required in the case of cross-border mergers
6. In case of closely held companies, certain conditions need to be satisfied to avail the exemption
7. If prescribed limits are exceeded
8. Subject to sectoral caps and declarations in prescribed form
9. In a scenario where the listed company is party to the scheme. In a scenario where listed company is not a party to the scheme, certain conditions need to be satisfied to avail the exemption
10. In a scenario where the listed company is a party to the scheme; the time frame can be eight to nine months
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Individuals

K.1 Visa

K.1.1 Business visa and employment visa

The visa guidelines restrict the nature of activities for which a business visa can be issued and stipulated that an employment visa is required for all other types of activities. Under the guidelines, foreign nationals coming to India for the purpose of executing projects and contracts in India do not fulfill the conditions for granting of a business visa. Therefore, a business visa is not granted to such foreign nationals. Instead, foreign nationals coming to India for the purposes of executing projects or contracts must obtain an employment visa.

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

- Skilled or qualified professionals
- Foreign nationals visiting India for employment in companies in India or in foreign companies executing projects in India

An employment visa may not be issued if a considerable number of qualified Indians are already available to fill the position, or if the job is an ordinary secretarial or clerical job.

An employment visa will be granted to a foreign national if their salary exceeds US$25,000 per annum. The salary threshold of US$25,000, however, does not apply to ethnic cooks, language teachers (other than English teachers), translators and staff working for the concerned embassy or high commission in India, and a visa may be issued to a foreign national visiting India for the purpose of carrying out the following activities:

- Execution of projects or contracts, regardless of duration
- Installation and commissioning of machinery with respect to a contract for supply
- Transfer of know-how for which an Indian company pays fees or royalties

146 The limit includes all cash payments and perquisites that are taxed in India.
Consulting on a contract basis for an Indian company that pays fixed remuneration

Taking up employment as a coach of a national- or state-level team or reputed sports club

Performing as a foreign sportsperson for a specific period under contract with an Indian club or organization

Providing engineering, medical, accounting, legal and other highly skilled services in the capacity of an independent consultant

Serving as a foreign language teacher or interpreter

Serving as a foreign specialist chef

No change of employer will be permitted during the duration of the employment visa within India, except with respect to the change of employment between a registered holding company and its subsidiary and vice versa, or between subsidiaries of a registered holding company.

A business visa is granted under specified conditions that include the assurance of the financial standing of the applicant, as well as their expertise in the field of the business in question.

The guidelines provide that a business visa may be issued to a foreign national visiting India for a short duration for the purpose of carrying out the following activities:

Establishing a business venture

Exploring the possibility of an industrial or business venture in India

Purchasing and selling of industrial, commercial or consumer products

Attending technical meetings or discussions

Attending board meetings and general meetings

Recruiting manpower

Functioning as partners or directors in a business

Consulting or participating with respect to exhibitions, trade fairs or business fairs

Meeting with suppliers or potential suppliers to evaluate or monitor quality, negotiate supplies, place orders and provide specifications for goods procured from India
Monitoring progress on ongoing projects
• Meeting with Indian customers on ongoing projects
• Meeting to provide high-level technical guidance on ongoing projects
• Conducting before- and after-sales activity that does not amount to the execution of a contract
• Conducting in-house training at regional hubs of a foreign company
• Serving as a tour conductor or travel agent

The business visa and employment visa may be issued only by the Indian Missions from the country of origin or from the country of domicile of the foreign national, provided that the period of permanent residence of the foreign national in the country of domicile is at least two years.

Accompanying family members can come to India with an “X visa.” However, this visa is issued to legal spouses and dependants only. India does not recognize “common law” partners. Under the guidelines, the visa of the spouse of an employee on an intracompany transfer may be converted from an X Visa to an employment visa, subject to specified conditions.

When applying for an employment visa, the intended legal entity and the location of work in India must be clearly specified because the mandatory registration at the Foreigners Regional Registration Office (FRRO) is based on the place of work as endorsed on the visa.

An employment visa can be extended in India on an annual basis for a period of 5 years starting from the date of initial issue of the visa. Similarly, an X visa issued to the dependent of the employment visa holder can also be extended up to the validity of the employment visa.

Self-employment: foreign nationals wishing to practice their professions or carry out occupations, trades or businesses in India must register with the RBI.

Project visa: the GOI has introduced project visas for foreign nationals coming to India for the “execution of projects in the power and steel sectors.” A specific endorsement will be made on the visa sticker indicating the name of the project for which the visa is issued and the location of the project.
The validity of the visa will initially be for a period of one year or for the actual duration of the project or contract with a multiple-entry facility. The period of visa will be determined by the Indian Missions carefully in each case, taking into account the actual duration of the project. The visa can be extended only with the approval of the Ministry of Home Affairs.

The employment/working of the foreign personnel will be restricted to the location of the project.

K.1.2 Conference visa

This visa is issued to foreign nationals visiting India to attend a conference if the individual meets all of the following conditions:

- They hold a valid passport and re-entry permit under the laws of their home country
- They are not a persona non grata or the subject of a negative list, warning circular or other restrictive list
- They are assured of financial standing

The conference visa is issued for the duration of the conference and the travelling time.

K.1.3 Journalist visa

A journalist visa is issued to professional journalists and photographers. Persons intending to make a documentary in India may contact the press and information wing of an embassy or consulate general of India. Foreigners entering India on journalist visas are not required to register with the FRRO if their continuous stay in India does not exceed 180 days, subject to any special endorsement on the visa.

The FRRO can extend a journalist visa for one year in the case of foreign journalists accredited with the Press Information Bureau (PIB).
K.1.4 Tourist visa

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

The GOI had previously stipulated that there should be a gap of at least two months between two visits to India on a tourist visa. However, the restriction has been lifted now, except in the case of nationals of Afghanistan, China, Iran, Pakistan, Iraq, Sudan and Bangladesh, foreigners of Pakistan and Bangladesh origins and stateless persons.

Visa on arrival: a tourist visa-on-arrival facility is available for the citizens of Finland, Japan, Luxembourg, New Zealand, Singapore, the Philippines, Cambodia, Laos, Vietnam, Myanmar and Indonesia. It is granted for a maximum validity of 30 days with a single-entry facility. The tourist visa on arrival will be provided only at designated international airports in India.

Others: other types of visas issued in India include the student visa, research visa and missionary visa.

K.1.5 Temporary landing facility and temporary landing permit

A temporary landing facility (TLF) or temporary landing permit (TLP) allows the entry of foreigners arriving in emergency situations, such as death or serious illness in the family, without an Indian visa on the payment of a specified amount. This facility can also be extended to transiting foreigners who have confirmed onward journey tickets within 72 hours. In addition, foreign tourists in groups of four or more arriving by air or sea who are sponsored by recognized Indian travel agencies and have a present itinerary can be granted a collective landing permit for a specified time period on the written request of the travel agencies to the immigration officer. This written request must provide the full personal and passport details of the group members, contain an undertaking to conduct the group in accordance with the itinerary and assure that no individual will be allowed to drop out from the group in any location in India. These measures with respect to TLF or TLP are not available to the nationals of Afghanistan, Bangladesh, Ethiopia, Iran, Nigeria, Pakistan, Somalia and Sri Lanka.
K.2 Residential permit

All foreign nationals must register with the police authorities at the local registration office within two weeks after their date of arrival if their visas are valid for longer than six months or if the visa stamp specifically requires this registration. A foreign national who holds a visa for a duration of six months or less and wishes to stay in India beyond the period of validity must register within two weeks after 180 days from the time of arrival in India. A PIO card holder whose continuous stay in India exceeds 180 days is required to register within 30 days after 180 days from the time of arrival in India. Prescribed documentation must be presented to register with the local registration office. The documentation may vary based on the location of the local registration office.

The original passport and visa are also required at the time of filing for verification by authorities.

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

Failure to register may result in the immigration authorities’ refusal to allow the foreign national to leave the country.

K.2.1 Formalities to be observed by registered foreigners

A registered foreigner is issued a registration booklet containing their latest photograph, details of residence and certain other information. Furthermore, an endorsement is made in the passport regarding registration. A foreigner must notify the registration authorities regarding any permanent change in their address. A foreigner also must inform the registration officer whether they propose to be absent from their registered address for a continuous period of eight weeks or more. Similarly, a foreigner who stays for a period of more than eight weeks in a jurisdiction other than the jurisdiction of their registered address, must inform the registration officer of that jurisdiction of their presence.
K.3 Family and personal considerations

Entry visas are issued to accompanying family members of individuals visiting India on business or for employment.

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

Family members intending to reside with a working expatriate must register separately at the local registration office.

Driver’s permit: foreign nationals are not permitted to drive in India using their home country drivers’ licenses. Foreign nationals should obtain international drivers’ licenses in their home countries. International drivers’ licenses are valid for a period of one year from the date of issue or until the domestic license becomes valid, whichever is earlier.

To obtain an Indian driver’s license, individuals should apply to the Regional Transport Authority, which issues learners’ permits. This enables the individual to drive when accompanied by an adult who has a valid Indian driver’s license. One month after the learner’s permit is issued, a driving test and a verbal examination of the local driving laws needs to be taken. On successful completion of the examinations, the Regional Transport Authority issues a driver’s license.
K.4 Other immigration matters

K.4.1 Restricted areas

Advance permission is required from Indian diplomatic missions abroad or from the Ministry of Home Affairs (MHA) in New Delhi to visit the states of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Sikkim, parts of the Kulu district and the Spiti district of Himachal Pradesh, the border areas of Jammu and Kashmir, some areas of Uttarakhand, the area west of National Highway number 15 running from Ganganagar to Sanchor in Rajasthan, the Andaman and Nicobar Islands, and the Union Territory of the Laccadives Islands (Lakshadweep). US citizens who visit the Tibetan Colony in Mundgod, Karnataka, must obtain a permit from the MHA before visiting.

K.4.2 PIO card

A PIO card can be obtained by any individual who is in possession of the passport of any other country except Pakistan, Bangladesh, Sri Lanka, Bhutan, Afghanistan, China and Nepal, or any other country specified by the Government, and who satisfies any of the following conditions:

- The individual has held an Indian passport at any time
- The individual or any of their parents, grandparents or great-grandparents were born in and were permanently resident in India
- The individual’s spouse is a citizen of India or a PIO (this implies that even a foreign spouse of a citizen of India or of a PIO can apply for a PIO card)

The PIO card will have a validity of 15 years, subject to the condition that a valid passport accompanies it.
PIO card holders are granted certain benefits, including:

- A waiver of the requirement to obtain a visa to visit India
- Exemption from the requirement to register with the FRRO authorities if the individual’s stay in India does not exceed 180 days
- Acquisition, holding, transfer and disposal of immovable properties in India, except acquisition of agriculture or plantation properties
- Facilities for obtaining admission to educational institutions in India
- Benefits under various housing schemes of the Life Insurance Corporation of India, state governments and other government agencies.

K.4.3 Overseas citizen of India card

India allows PIOs who are also citizens of other countries to acquire overseas citizenship of India, without surrendering the citizenship of the other country.

An Overseas Citizen of India (OCI) card is a multiple-entry, life-long visa to visit India. Furthermore, there is no FRRO registration required for OCI card holders. A person registered as an OCI for five years and residing in India for one out of the five years is eligible to apply for Indian citizenship.

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

- The individual was eligible to become a citizen of India on 26 January 1950
- The individual was a citizen of India at any time on or after 26 January 1950 or belonged to a territory that became part of India after 15 August 1947
- Children or grandchildren of the above individuals
K.5 Foreign exchange regulation

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

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

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

Under a liberalized remittance scheme for resident individuals that has been notified, total remittances of up to US$75,000 in each FY for each individual are allowed for permissible current accounts and permissible capital account transactions, subject to certain exceptions.
Direct taxes

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Direct taxes

India has a well-developed tax structure and the authority to levy taxes is divided between the central and state governments. The Central Government levies direct taxes comprising income tax and wealth tax.

L.1 Administration

Administration, supervision and control in the area of direct taxes lie with the CBDT. The CBDT works under the MoF and exercises significant influence over the working of the country's direct tax laws. The CBDT also ensures effective discharge of executive and administrative functions.

The Indian tax year extends from 1 April of a year to 31 March of the subsequent year. The tax year for a corporation also follows the same calendar. All corporations (except those who are required to submit a transfer pricing certificate in Form 3CEB, with respect to international transactions or specified domestic transactions) are required to file a ROI by 30 September, even in the event of loss. However, corporations who are required to submit a transfer pricing certificate in Form 3CEB are required to file a ROI by 30 November. Non-resident corporations are also required to file a ROI in India if they earn income in India or have a physical presence or economic nexus with India.

Corporate tax liability needs to be estimated and discharged by way of advance tax in four instalments on 15 June, 15 September, 15 December and 15 March of every year.

Late filing of a ROI and delays in payment or shortfalls in taxes are liable to attract penal interest at prescribed rates. Interest is generally imposed on the balance of the unpaid tax and on underpayment of the advance tax.
L.2 Corporate income tax

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

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

Corporations resident in India are taxed on their worldwide income arising from all sources. Non-resident corporations are taxed on the income earned through a business connection in India or through transfer of a capital asset, being any share or interest in a company incorporated outside India, deriving its value substantially from assets located in India or through other Indian sources.

A corporation is regarded as a resident in India if it is incorporated in India or if its control and management is wholly situated in India.

If there is a DTAA between India and the country of non-resident, the provisions of the IT Act or the DTAA, whichever is more beneficial, will apply and, accordingly, the taxability is likely to be restricted or modified. However, in order to be eligible for DTAA benefits, a non-resident is required to obtain a valid Tax Residency Certificate (TRC) issued by revenue authorities of the country of residence and furnish other documents or information as may be prescribed. The CBDT has issued notification dated 1 August 2013 prescribing the format of additional information (Form 10F) required to be provided by the person claiming DTAA benefits. In general, tax treaties provide that residents of other countries are subject to tax in India on business profits, only if the non-resident has a PE in India.
L.2.1 Rates of corporate tax

Normal rate

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

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

<table>
<thead>
<tr>
<th>Sl. no</th>
<th>Description</th>
<th>Tax rate</th>
<th>Surcharge</th>
<th>Education cess</th>
<th>Effective rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Where the total income is up to INR10m:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Domestic corporation</td>
<td>30%</td>
<td>Nil</td>
<td>3%</td>
<td>30.90%</td>
</tr>
<tr>
<td></td>
<td>Foreign corporation</td>
<td>40%</td>
<td>Nil</td>
<td>3%</td>
<td>41.20%</td>
</tr>
<tr>
<td>B</td>
<td>Where the total income is more than INR10m and up to INR100m:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Domestic corporation</td>
<td>30%</td>
<td>5%</td>
<td>3%</td>
<td>32.45%</td>
</tr>
<tr>
<td></td>
<td>Foreign corporation</td>
<td>40%</td>
<td>2%</td>
<td>3%</td>
<td>42.02%</td>
</tr>
<tr>
<td>C</td>
<td>Where the total income is more than INR100m:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Domestic corporation</td>
<td>30%</td>
<td>10%</td>
<td>3%</td>
<td>33.99%</td>
</tr>
<tr>
<td></td>
<td>Foreign corporation</td>
<td>40%</td>
<td>5%</td>
<td>3%</td>
<td>43.26%</td>
</tr>
</tbody>
</table>

An LLP is liable to pay tax at the base rate of 30% which is to be further increased by education cess at the rate 3% Surcharges is not applicable.

Dividend distributed by the corporation is subject to distribution tax of 16.995% (inclusive of surcharge and education cess) payable by such corporation. An unlisted Indian company is liable to pay tax of 22.66% on distributed income on buyback of shares. Corporations are liable to pay MAT calculated at 18.5% of book profit (discussed separately in L3.1, page number 233). There is no repatriation tax cost while profits are distributed by an LLP, as the share of such profits in the hands of the partner(s) is exempt.
Special rates for non-resident corporations

Royalty or fees for technical services: foreign corporations are taxed with respect to royalties or Fees for Technical Services (FTS) at the rate of 25% on gross basis (plus applicable surcharge and education cess), received from the GOI or Indian concern under agreement, that is approved by the GOI or under arrangements which are in accordance with the country's industrial policy. With reference to the same, please note the following:

1. Royalties and FTS, that are effectively connected with the foreign corporation's permanent establishment in India, are taxed on a net income basis at the normal rates applicable to foreign corporations.

2. Royalties and FTS that are not received from the GOI or Indian concerns are taxed on a net income basis at normal rates applicable to foreign corporations. So are the Royalties and FTS payable under agreements that are not approved by the GOI or under arrangements that are not in accordance with India's industrial policy.

Dividend income: dividend income distributed by domestic corporations (on which DDT has been paid by the company distributing the dividend) is exempt from tax in the hands of the recipients.

Interest on foreign currency loans: foreign corporations earning interest on foreign currency loans given to an Indian concern or to the GOI are taxed at the rate of 20% on the gross interest. Any interest made by an Indian company to a non-resident or a foreign company in respect of monies borrowed in foreign currency between 1 July 2012 and 1 July 2015 under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the GOI, are taxed at the rate of 5% on gross interest.

Income earned by overseas financial organizations: specified overseas financial organizations earning an income from units of specified mutual funds, purchased in foreign currency, are taxed at the rate of 10% on the gross amount of such income. Long-term capital gains arising from the transfer of such units are also taxed at the rate of 10%
Income earned by FIIs: FIIs are taxed at the rate of 20% on income received with respect to securities, at the rate of 10% on long-term capital gains and at the rate of 30% on short-term capital gains arising from the transfer of securities. However, if the transaction is liable to STT, an FIIs long-term capital gains are exempt from tax and its short-term capital gain is liable to taxation at 15%. Any payment by way of interest made by any person to a FI in respect of an investment made in an INR-denominated bond of an Indian company or government security between 1 June 2013 and 1 June 2015 is taxed at the rate of 5% on gross interest.

The rates given above are likely to be subject to a more beneficial provision of the DTAA between India and the country in which the taxpayer is resident. See Appendix 4 for a sample corporate tax calculation.

Other tax rates under domestic tax laws are as follows:

<table>
<thead>
<tr>
<th>Nature of income</th>
<th>Tax rates % (corresponding note)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital gains</td>
<td></td>
</tr>
<tr>
<td>Long-term capital gain</td>
<td>20 (a) (c) (d)</td>
</tr>
<tr>
<td>Short-term capital gain</td>
<td>Normal tax rate (as provided in the table above) (c) (d)</td>
</tr>
<tr>
<td>Withholding tax</td>
<td></td>
</tr>
<tr>
<td>Dividends</td>
<td></td>
</tr>
<tr>
<td>Paid to domestic corporation</td>
<td>Nil (f)</td>
</tr>
<tr>
<td>Paid to foreign corporation</td>
<td>Nil (f)</td>
</tr>
<tr>
<td>Interest</td>
<td></td>
</tr>
<tr>
<td>Paid to domestic corporation</td>
<td>10 (g)</td>
</tr>
<tr>
<td>Paid to foreign corporation</td>
<td>20/ 5 (a) (b) (g)</td>
</tr>
<tr>
<td>Royalties from patents, know-how, etc.</td>
<td></td>
</tr>
<tr>
<td>Paid to domestic corporation</td>
<td>10 (g)</td>
</tr>
<tr>
<td>Paid to foreign corporation</td>
<td>25 (a) (e) (g)</td>
</tr>
<tr>
<td>FTS</td>
<td></td>
</tr>
<tr>
<td>Paid to domestic corporation</td>
<td>10 (g)</td>
</tr>
<tr>
<td>Paid to foreign corporation</td>
<td>25 (a) (e) (g)</td>
</tr>
</tbody>
</table>
a. For the tax year ending 31 March 2014, the rates listed above for capital gains tax and withholding tax have to be increased by a surcharge of 2% or 5% on the base tax rate if the total income/ payments subject to withholding exceeds INR10m and up to INR100m in the case of foreign corporations or domestic corporations, respectively. If it exceeds INR100m, the rate of surcharge leviable on the base tax rate is 10% or 5% in the case of domestic or foreign corporations, respectively. In addition, the tax payable by corporations has to be increased by an education cess, which is imposed at the rate of 3% of the tax payable, inclusive of the surcharge.

b. This rate only applies to interest on foreign currency loans. Any other interest is subject to tax at normal rates applicable to foreign corporations. However, any interest paid by an infrastructure debt fund to a non-resident or to a foreign company attracts a withholding tax of only 5% (plus applicable surcharge and cess). Any payment by way of interest made by an Indian company to a non-resident or a foreign corporation in respect of monies borrowed in foreign currency between 1 July 2012 and 1 July 2015, under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the GOI, attracts a withholding tax of only 5% (plus applicable surcharge and cess). Furthermore, any payment by way of interest made by any person to an FII or QFI in respect of monies borrowed in an INR-denominated bond of an Indian company or a government security between 1 June 2013 and 1 June 2015 attracts withholding of only 5% (plus applicable surcharge and cess).

c. Assets that are held for more than three years (one year for shares, units of mutual funds and other specified securities) are treated as long-term capital assets and gain arising from the sale of such assets is taxable as long-term capital gains. Assets that are not long-term capital assets are treated as short-term capital assets and gain arising from such assets are treated as short-term capital gains, taxable at normal corporate tax rates. Gain arising from the sale of business assets, being subject to depreciation, is deemed to be short-term capital gains and is taxable at normal corporate tax rates irrespective of the tenure for which it has been
d. Long-term capital gains arising from the transfer of equity shares or the units of an equity-oriented mutual fund on any recognized stock exchange in India are exempt from tax if STT (which varies from 0.001% to 0.01% of the value) has been paid on such transactions and short-term capital gains on such transactions are taxed at 15%. Long-term capital gains arising from the transfer of unlisted securities by a non-resident investor or foreign corporation are taxed at 10% on the gains computed without giving benefit of currency fluctuation and indexation.

e. Subject rates apply in the case of royalties or FTS being received by a foreign company in pursuance of an agreement with the GOI or Indian concern entered after 31 March 1976. The rate will, however, not impact the tax rate applicable under the relevant DTAA.

f. Dividend received by a domestic corporation during the period 1 April 2011 to 31 March 2014 from a specified foreign company is taxable at the rate of 15%. The company in which the Indian company holds 26% or more of the equity share capital is a specified foreign company.

g. If the PAN of the payee is not available, tax shall be withheld at an applicable rate or at a penal rate of 20% whichever is higher. The penal rate also overrides rates according to DTAA.

L.2.2 Determination of taxable income (corporate)

i. Income from house property

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

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

Taxable profits are computed in accordance with common business or accounting principles, modified by statutory tax provisions.

Business deductions

Taxpayers can deduct all business-related expenses from their gross income. Personal expenses and capital expenditure, other than expenditure on scientific research and other specified expenses, are not deductible. Income tax, wealth tax, employees’ personal tax on non monetary perquisites borne by the employer and expenditure incurred in relation to exempt income are also not deductible.

Inventories

Inventories should be valued in accordance with the accounting policy regularly complied with by the taxpayer at cost or net realizable value (whichever is lower).

Provisions

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

General provisions for doubtful debts are not deductible unless the bad debt is actually written off in the accounts. However, relief up to specified limits is available to banks and financial institutions with respect to provisions of non-performing assets.

Retirement payments

Payments made to employees under voluntary retirement schemes are deductible over a period of five years commencing from the year in which the sum has been paid.
Contributions to retirement benefits and other similar welfare funds are deductible, provided the corresponding payments are discharged before due date for filing the ROI. Otherwise, deduction is allowed in the year of actual payment.

Depreciation and amortization allowances

Depreciation or amortization included in financial statements is not deductible. Except in the case of undertakings engaged in the generation or the generation and distribution of power, depreciation for tax purposes must be calculated on a block of assets according to the declining balance method at prescribed rates. A block of assets is a group of assets falling within a class of assets, comprising tangible and intangible assets, in respect of which specific tax depreciation rates are prescribed. Allowance for depreciation is only available after the asset is ready for use for its business purpose. Depreciation is computed on the amount arrived at after adding to the declining balance value at the beginning of the year for a particular block of assets the actual cost of the assets acquired during the year, reduced by the sale proceeds arising from the disposition of any asset in that block. In the event assets are acquired during the year and put to use for a period of less than 180 days, only half of the admissible depreciation is allowed during that year.

Tax depreciation rates (declining balance method):

<table>
<thead>
<tr>
<th>Assets</th>
<th>Percent (%)</th>
<th>Assets</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plant and machinery</td>
<td>15*</td>
<td>Ships</td>
<td>20</td>
</tr>
<tr>
<td>Cars other than those that are hired out</td>
<td>15</td>
<td>Residential buildings</td>
<td>5</td>
</tr>
<tr>
<td>Computers (including software)</td>
<td>60</td>
<td>Buildings other than residential ones</td>
<td>10</td>
</tr>
<tr>
<td>Furniture and fittings, including electrical fittings</td>
<td>10</td>
<td>Intangible assets such as know-how, patents, copyrights trademarks, licenses, franchises or any other business or commercial right of similar nature</td>
<td>25</td>
</tr>
<tr>
<td>Buses, lorries and taxies that are hired out</td>
<td>30</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* In respect of plant and machinery (other than ships and aircraft) installed after 31 March 2005, additionally, accelerated depreciation equal to 20% of the actual cost is allowed in the year of acquisition to the taxpayer engaged in the business of manufacturing or producing any article, or in the business of generation or generation and distribution of power.
Investment-based deduction

The taxpayer engaged in the manufacturing business is allowed additional allowance or deduction while computing its taxable income at the rate of 15% of the actual cost of assets acquired and installed from 1 April 2013 to 31 March 2015, if the aggregate amount of the actual cost of such new assets exceeds INR1,000m. If these assets are sold within five years from the date of installation, the amount of deduction allowed as aforesaid shall be deemed to be the income of the taxpayer.

Expenditure on inhouse-scientific research
(weighted deduction)

Subject to the satisfaction of prescribed conditions and obtaining necessary approvals, a taxpayer engaged in the business of biotechnology or in any business of manufacturing or production of any article or thing is allowed a weighted deduction of twice the expenditure, either capital or revenue, incurred for scientific research (excluding the cost incurred for the acquisition of land or buildings).

Restrictions on interest deductions

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

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

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

With effect from 1 April 2012, if taxes are not deducted by the payer but the resident payee declares the payment in the ROI and deposits taxes on such returned income, the payer is not considered to be in default, subject to fulfilment of obtaining a prescribed certificate.
Foreign exchange losses

Foreign exchange fluctuations are considered while computing taxable income, provided they are on a revenue account. Realized exchange fluctuations on a liability, with respect to assets acquired outside India, can be adjusted with their declining balance value. Other exchange fluctuations on a capital account are neither taxable nor deductible.

Relief for losses

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

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

iii. Capital gains and losses

Proceeds in excess of cost from the disposition of capital assets are generally taxed as capital gains, subject to certain adjustment as prescribed. However, if such proceeds are not ascertainable or cannot be determined, then the fair market value of these assets will be treated as proceeds from disposition of the capital asset. Capital assets include all kinds of property except stock-in-trade, raw material and consumables used in businesses or professions, personal effects (except jewelry), agricultural land (subject to certain exceptions) and notified gold bonds.

Furthermore, transfer of a capital asset, being any share or interest in a company incorporated outside India and deriving its value substantially from the assets located in India, will be subject to capital gains in India.

General provisions

Long-term capital gains: profits earned from the transfer of long-term capital assets are referred to as long-term capital gains. Generally,
assets that have been held for more than three years are treated as long-term capital assets for the purpose of capital gains. However, the following assets are treated as long-term capital assets if held for more than one year:

- Shares (both listed and unlisted) or any other listed security
- Units of Unit Trust of India (UTI)
- Units of specified mutual funds
- Specified zero-coupon bonds

In general, long-term capital gains are taxed at a basic rate of 20%. The cost of a capital asset is adjusted for inflation (indexation) to arrive at the indexed cost, which is allowed as a deduction while computing such long-term capital gains. Long-term capital gains arising from the transfer of unlisted securities by a non-resident investor are taxed at 10% on the gains computed without giving the benefit of currency fluctuations and indexation.

Gains derived from the transfer of UTI units, specified mutual fund units, listed securities or zero-coupon bonds could be taxed at the rate of 10% (plus applicable surcharge and education cess), without allowing indexation adjustments, or at the rate of 20% (plus applicable surcharge and education cess) with the benefits of indexation, at the option of the taxpayer.

Long-term capital gains arising from the transfer of equity shares or the units of an equity-oriented fund (> 65% equity) on any recognized stock exchange in India is exempt from tax if STT has been paid. The STT rate has been reduced with effect from 1 June 2013 and varies from 0.001% to 0.01% of the transaction value.

Capital gains derived from shares purchased by domestic unlisted companies pursuant to the scheme of buyback is exempt in the hand of shareholders with effect from 1 June 2013.

For assets acquired on or before 1 April 1981, the fair market value, as of 1 April 1981, or the actual cost of acquisition at the option of the taxpayer will be treated as the cost of the asset. To compute capital gains arising from the transfer of bonus shares acquired after
1 April 1981, its cost is considered to be nil.

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

Long-term capital gains are exempted from tax if an onward investment has been made as prescribed by the law in certain specified modes, including investment in residential property and specified bonds of institutions.

Short-term capital gains: capital gains arising from the transfer of short-term capital assets (assets that do not qualify as long-term capital assets) are referred to as short-term capital gains and are taxed at normal corporate income tax rates.

Short-term capital gains arising from the transfer of equity shares, the units of an equity-oriented fund on any recognized stock exchange in India on which STT has been paid, are taxed at a lower rate of 15% (plus applicable surcharge and education cess).

Short-term capital losses are allowed to be carried forward for eight consecutive years (subject to filing of a ROI on or before the due date) and can only be offset against taxable capital gains (both long term and short term).

Capital gains on depreciable assets: to compute capital gains arising from the sale of assets on which depreciation has been allowed, the sale proceeds of the assets are deducted from the declining balance value of the block of assets (including additions made during the year) of which the former form a part. If the sales proceeds exceed the declining balance value of the entire block, the excess is treated as short-term capital gain. Otherwise, there is no capital gain from the sale of such assets, even if the sales proceeds from a particular asset are greater than the cost of such an asset. If all the assets that form a part of a block are sold, the excess or deficit of the declining balance (including additions made during the year) over the sale proceeds is treated as a short-term capital gain/capital loss.
Special provisions relating to capital gains

Domestic tax law has a special provision for the taxation of capital gains earned by non-residents by the transfer of the shares and debentures of an Indian corporation acquired by utilizing foreign currency. Any gain (short or long term) is first computed in foreign currency utilized for investing in shares or debentures and then converted into INR at the exchange rate prevailing on the date of the transfer, to calculate taxable capital gains.

This special provision is a measure that is aimed at mitigating the effect of any fluctuation in the exchange rates of foreign currency on the capital gains earned by non-residents. No indexation benefits are offered in the calculation of capital gains in such cases.

Amalgamations, demergers and slump sales

Amalgamations: amalgamations are tax neutral, subject to the satisfaction of prescribed conditions. In the case of non-compliance with any of the prescribed conditions, any brought-forward business loss and unabsorbed depreciation that has been set off by the amalgamated corporation is treated as its income for the year in which it failed to fulfil any of the prescribed conditions.

Demergers: the demerger of businesses by existing corporations is tax neutral, subject to the fulfilment of prescribed conditions. The accumulated losses and depreciation of the demerged corporation, attributable to the resulting corporation, can be carried forward and set off by the latter, subject to its compliance with prescribed conditions.

Slump sales: profits derived from a slump sale are taxed as long-term capital gains if the transferred undertaking has been held for more than 36 months. Taxable capital gain arising from a slump sale is the excess of the consideration received over the net worth of the undertaking. The net worth is the difference between the value of the undertaking’s total assets (the sum of the tax-depreciated value of assets that are depreciable for income tax purposes and the book value of the other assets) and the book value of its liabilities.
iv. Income from other sources

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

Where a closely held company receives from a resident consideration for issue of shares that exceeds the fair market value of such shares, such excess can be considered as income of the recipient. The fair market value of shares is higher of value as per prescribed method or value based on value of assets as may be substantiated by the company to the satisfaction of revenue authorities. However, receipt of such amounts by SEBI-registered venture capital funds or venture capital companies and other notified class of persons will not be considered as income.

Where a closely held company receives from any person (resident or non-resident) shares of another closely held company either without consideration or for consideration less than fair market value, the difference in value is considered as income of the recipient corporation. The fair market value of a share is required to be determined according to the prescribed method. However, receipt of shares in a scheme of amalgamation or demerger is excluded.

Investment income

The amounts declared, distributed or paid as dividends by Indian corporations are not taxable in the hands of the shareholders as the same are subject to DDT.

The dividends paid by foreign corporations are subject to tax in the hands of shareholders. Dividend received by a domestic corporation during the period 1 April 2011 to 31 March 2014 from a specified foreign company is taxable at the rate of 15% (plus surcharge and education cess). A specified foreign company is a foreign company in which an Indian company holds 26% or more in nominal value of the equity share capital of the company.
L.3 Other direct taxes (corporate)

L.3.1 MAT

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

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

L.3.2 AMT

Indian income tax law requires AMT to be paid by any person (other than corporations), i.e., partnership firms, LLP, etc., who claims specified deductions. In cases where tax payable according to regular tax provisions is less than 18.5% of adjusted total income, then such a person is required to pay AMT on such total income at the rate of 18.5% (plus applicable cess). Adjusted total income for computation of AMT shall be the total income before giving effect to the aforesaid specified deductions. The provisions of AMT will not be applicable for certain specified tax payers in case the adjusted total income exceeds INR2m. The tax credit, carryforward and set-off provisions are similar to provisions under MAT.

L.3.3 Dividend distribution tax

Dividend paid by domestic corporations are exempt from tax in the hands of the recipients. However, domestic corporations must pay Dividend Distribution Tax (DDT) at the rate of 16.995% (including a 10% surcharge and a 3% education cess) on dividends declared, distributed or paid by them. Such tax is a non-deductible expense.
Where the recipient domestic corporation declares dividend, credit for dividend received from the domestic subsidiary and foreign subsidiary is available for computation of dividend on which DDT is to be paid by the recipient domestic corporation, provided:

- The dividend is received from its domestic subsidiary after discharging DDT on such dividend
- The dividend is received from a foreign subsidiary and tax at 15% on such dividend is payable by the domestic corporation declaring dividend.

Under these provisions, a company is deemed to be a domestic subsidiary of another company where the other company holds more than 50% in nominal value of the equity share capital, and a company is considered to be a foreign subsidiary if the other company holds 26% or more in the nominal value of the equity share capital.

L.3.4 Tax on buyback of shares of an unlisted Indian company

An Indian unlisted company has to pay a 20% tax on “distributed income” on buyback of shares with effect from 1 June 2013. Distributed income is equal to consideration paid by the unlisted Indian company for buyback of the shares minus the amount that was received by the unlisted Indian company for the issue of such shares. On the other hand, the shareholder is exempt from tax on proceeds received from the buyback of shares. No deduction shall be allowed to the unlisted Indian company in respect of such tax.

L.3.5 Distribution tax to be paid by a securitization trust

Specified securitization trusts distributing income to their investors are liable to pay distribution tax at the rate of 25% in the case of income distribution to individuals and HUFs and 30% to other investors. No distribution tax is to be paid where payment is made to persons who are exempt under the provision of the IT Act. Dividend income received from a securitization trust is exempt from tax. This levy is effective from 1 June 2013.
L.3.6 Wealth tax

In India, wealth tax is payable at the rate of 1% if the taxable value of a corporation’s net wealth exceeds INR3m. Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewelry, bullion, precious metals, any amount of cash not recorded in books of account and commercial property not used as a business, office or factory premises. However, a residential house or houses owned by an employer and provided to an employee earning less than INR1m a year are exempt from tax. Assets such as a house for commercial purposes or a residential property are exempt from tax if they are owned as stock in trade, and residential property used for hire for 300 or more days in a year is also exempt. Productive assets such as shares, debentures and bank deposits, etc. are not subject to wealth tax. A deduction is allowed for debts owed that have been incurred in relation to taxable assets. Tax is levied on net wealth, as on 31 March of the FY.

L.4 Industry-specific tax schemes

An optional tonnage tax scheme was introduced for the Indian shipping industry from 1 April 2004, which taxes income on a deemed profit basis. Oil and insurance corporations have a separate code of taxation. Foreign shipping and air transport companies also have a deemed profit basis of taxation.

L.5 Foreign tax relief

Tax treaties entered into by India with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations can claim a foreign tax credit for the tax paid by them in other countries. The credit amount granted to such corporations is the lower of the tax payable in India on income that is subject to double taxation or the foreign tax paid.

For a list of indicative tax rates prescribed under the various treaties, see Appendix 5.
L.6 Notified Jurisdictional Area

The Indian Government may, having regard to the lack of effective exchange of information with any country or territory outside India, specify the country or territory as a Notified Jurisdictional Area (NJA) in relation to transactions entered into by any taxpayer. In this regard, Section 94 provides for the following onerous consequences (limitations or denial of benefits) for transactions entered with a person located in an NJA:

- A transaction with a person located in an NJA will be deemed to be an “international transaction,” and all parties to the international transaction will be treated as “associated enterprises.” Accordingly, the transaction shall be subject to transfer pricing regulation in India.
- No deduction in respect of payment made to any financial institution located in NJA would be allowed unless the Indian resident furnishes an authorization to the Indian Tax Authority to seek necessary information from the financial institution.
- No deduction would be allowed for any expenditure/allowance (including depreciation) arising from such transactions, unless the Indian resident maintains such documentation and furnishes such information as may be prescribed by CBDT.
- Any sum received by the Indian resident from a person located in an NJA would be deemed to be the income of the Indian resident, unless it “satisfactorily” explains the source of the money.
- Any payment to a person located in an NJA shall be subject to a higher withholding tax rate of 30%.
- With reference to the above, it is pertinent to note that the CBDT has issued a press release dated 1 November 2013 notifying Cyprus as a NJA.
L.7 Appeal mechanism

L.7.1 Conventional route

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

- Appeal to Commissioner of Income Tax (Appeals)
  An aggrieved taxpayer can file an appeal within the prescribed time, i.e., 30 days, and on payment of prescribed fees with the Commissioner of Income Tax (Appeals) (CIT-A) against any order in tax assessment by a lower authority.

- Filing of objection before the Dispute Resolution Panel (DRP)
  Alternatively to the above appeal process, an eligible taxpayer can file objections within the prescribed time, i.e., 30 days, with the DRP against the draft order passed by the lower authority in a tax assessment. The eligible taxpayer is any taxpayer or any foreign company suffering a transfer pricing adjustment. The DRP issues directions within a maximum period of nine months from the end of the month in which the draft order was dispatched to the eligible taxpayer. The tax authority is duty bound to pass the final order in confirmation with the directions of the DRP within one month from the end of the month in which such a direction is received. The final order can be appealed before the Income Tax Appellate Tribunal. The DRP mechanism was intended to facilitate an expeditious resolution of transfer pricing and international tax disputes.

- Appeal to Income Tax Appellate Tribunal (ITAT)
  If a taxpayer or the revenue department feels aggrieved about an order passed by the CIT-A or DRP, an appeal can be preferred by the aggrieved taxpayer within the prescribed time, i.e., within 60 days, and on payment of prescribed fees with the ITAT on any question of fact or law, or both. ITAT is the final fact-finding authority.
Appeal to the High Court (HC)
The IT Act provides for appeals to the HC from every order of the ITAT wherever the taxpayer or revenue department feels aggrieved, provided the appeal involves a substantial question of law. The appeal needs to be filed within the time limit allowed under the IT Act, i.e., 120 days, along with the payment of necessary fees.

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

L.7.2. Authority for advance ruling

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

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

A ruling can be obtained by an applicant (who may be either a non-resident or a resident who has entered a transaction with a non-resident) with respect to any question of law or fact in relation to the tax liability of the non-resident arising out of a transaction undertaken or proposed to be undertaken.
L.8 Income tax (individuals)

L.8.1 Liability for income tax

Liability for income tax is governed by the residential status of individuals during the tax year.

Individuals are considered to be residents if they meet either of the following criteria:

- They were present in India for 182 days or more during the tax year, which extends from 1 April to 31 March.
- They were present in India for 60 days or more during the tax year and for at least 365 days in total during the preceding four tax years (the period of 60 days can be extended to 182 days in certain cases).

Individuals who do not meet either of the criteria mentioned above are considered to be non-residents. Individuals are considered to be “not ordinarily resident” if, in addition to meeting one of the criteria mentioned above, they satisfy either of the following conditions:

- They were non-resident in India for 9 out of the preceding 10 tax years.
- They were present in India for 729 days or less during the previous 7 tax years

All individuals are subject to tax, unless they are exempt under the IT Act or applicable tax treaties.
Income liable to be taxed in India depends on the residential status of the taxpayer. Categories of income liable to be taxed, according to residential status, have been depicted in the table below:

<table>
<thead>
<tr>
<th>Residential status</th>
<th>Taxability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident and ordinary resident</td>
<td>Worldwide income</td>
</tr>
<tr>
<td>Resident and not ordinarily resident</td>
<td>• Income received in India or deemed to be received in India</td>
</tr>
<tr>
<td></td>
<td>• Income accruing or arising in India or deemed to accrue or arise in India</td>
</tr>
<tr>
<td>Non-resident</td>
<td>• Income received in India or deemed to be received in India</td>
</tr>
<tr>
<td></td>
<td>• Income accruing or arising in India or deemed to accrue or arise in India</td>
</tr>
</tbody>
</table>

L.8.2 Types of incomes subject to tax in India

In general, all income received or accrued in India is subject to tax. Taxation of various types of income is detailed below. See the table in Appendix 6.1, which indicates individual income tax calculation, and Appendix 6.2, which depicts the taxability of income items.

i. Employment income

All salary income related to services rendered in India is deemed to accrue or arise in India, regardless of where it is received or the residential status of the recipient.

Employees of foreign enterprises who are citizens of foreign jurisdictions are not subject to tax if all of the following conditions are satisfied:

- The foreign enterprise is not engaged in trade or business in India.
- The employee does not stay in India for an aggregate period of more than 90 days in the tax year.
- The compensation paid is not liable to be deducted from the income of the foreign employer in India.
Similar exemptions are available under tax treaties if an individual's stay is less than 183 days, but conditions vary. Non-resident foreign citizens employed on foreign ships, who do not stay in India for longer than 90 days in a tax year, are also exempt from tax on their earnings.

In general, most elements of compensation are taxable in India. However, certain benefits (listed below) are likely to receive preferential tax treatment, subject to certain requirements.

Corporate housing: the benefits of corporate housing (owned by the employer) is generally taxed at 15% of an individual's salary (10% of salary in cities with a population of less than 2,500,000 and 7.5% of salary in cities with a population of less than 1,000,000, according to the 2001 census). In the event accommodation is taken on lease by the employer, the employee is taxed at either 15% of their salary or the actual lease rental paid by the employer, whichever is lower. However, where any rent for the accommodation is recovered from the employee, the perquisite value is reduced by this amount. Furniture and appliances provided by the employer are taxed at the rate of 10% of their cost if the employer owns the items or the rent paid if the employer hires these.

Furthermore, where accommodation is provided at the place of relocation in addition to existing accommodation, the perquisite value of any one accommodation that has a lower value for a period up to 90 days is included in employment income, and thereafter, the perquisite value of both accommodations are included in employment income.

Hotel accommodation: if an employee is provided with hotel accommodation, tax is imposed on either the hotel charges paid by the employer or 24% of the employee's salary, whichever is lower, reduced by the amount recovered from the employee, unless such accommodation is provided free of cost to the individual for up to 15 days on relocation. Such accommodation provided for 15 days in total is exempt from tax.

Superannuation fund: contributions made by an employer (in excess of INR0.1m) to a superannuation fund are taxable in the hands of the employee.
Interest-free or low-interest loans: the benefit of interest-free loans or low-interest loans exceeding INR20,000 to an employee or a member of an employee’s household is taxable, based on the purpose of availing the loan. The rate of interest is the one notified by the State Bank of India for similar loans.

Employer-paid taxes on non-monetary benefits: in general, the tax paid by an employer on behalf of an employee is grossed and taxed in the hands of the employee. However, any tax paid by an employer on behalf of the employee on non-monetary benefits is exempt in the hands of the employee.

The following employer-paid items are not included in an employee’s taxable compensation or included in their taxable income at a value lower than the actual cost incurred by the employer (to the extent that they do not exceed specified limits and satisfy the prescribed conditions):

- Reimbursable medical expenses
- Contributions to retirement benefit funds, including provident and gratuity funds, in India
- Certain allowances, including house rent and leave travel
- Travel and living allowance while on tour or transfer from normal place of duty

There is tax exemption of up to INR100 per month per child for up to two children on an education allowance provided by the employer to an employee to meet the cost of their children’s education. An allowance granted to an employee to meet hostel expenses (boarding expenses in residential schools and colleges) of their children is exempt up to INR300 per month per child for up to two children.

The value of specified perquisites provided by an employer, such as free or concessional use of a motor car, gas, electricity, water, food and beverages, club facility, movable assets, etc., is included in employment income, subject to certain exceptions. Reimbursement of telephone expenses, including a mobile phone, is not considered as a perquisite.
ii. Taxation of employer-provided stock options (ESOPs)

ESOPs allotted or transferred by an employer, free of cost or at a concessional rate, are taxable in the hands of the employee. ESOPs are taxed at a fair market rate on the date they are exercised by an employee, reduced by the amount actually paid by or recovered from the employee.

iii. Income from house property

According to provisions of the IT Act, taxability of income from house property in the case of corporations and individuals is the same. For taxability of income from house property, kindly refer to L.2.2.i, page number 224.

iv. Self-employment and business income

All self-employed individuals or those doing business in India are subject to tax. The general principles of taxation in respect of business income in the case of individuals are similar to those of a corporation, as discussed in L.2.2.ii, page number 225.

Deemed basis of taxation

With the objective of increasing compliance with taxation provisions for small businesses and reducing the administrative burden on the tax machinery, the GOI has introduced a presumptive taxation scheme that is applicable to individuals, any Hindu undivided family (HUF) and partnership firms (excluding LLPs) for all businesses (except the business of plying, hiring or leasing goods and carriages, persons engaged in specified professions, carrying out agency business or earning income in the nature of commission or brokerage) with a turnover of INR10m or less. Under the scheme, the taxpayer has the option to declare total income on a deemed basis at 8% of gross receipts.

v. Capital gains on assets

The provisions in respect of taxability of capital gains in the case of individuals are similar to those in respect of corporations, as discussed in L.2.2.iii, page number 228.
However, the following provisions are applicable only in respect of individuals and HUFs:

- Long-term capital gains are exempt from tax in certain cases, if the gains are reinvested within six months in certain specified bonds. This exemption can be claimed for investments up to INR5m. If, within three years of the reinvestment, the specified bonds are sold or, in certain cases, used as security for a loan or an advance, the capital gains derived from the sale of original assets are subject to tax in the year, and the specified bonds are sold or used as security.

- Exemptions are available for long-term gains derived from the sale of a residential house and other capital assets if the gains are used to acquire a residential house within the prescribed time.

- Furthermore, capital gains arising from the transfer of land is exempt if the land has been used by a taxpayer or a taxpayer’s parents for agricultural purposes for at least two years immediately preceding the date of transfer, and if the taxpayer uses the gains to purchase other land for agricultural purposes within two years from the date of the transfer. If gains from the sale of agricultural land are not reinvested, they are taxed as short-term gains if this land is held for less than three years, and as long-term gains if it is held for more than three years.

- Long-term capital gains on the sale of residential property by an individual or HUF will be exempt if the net sale consideration is used for subscription to equity shares of a manufacturing SME and the SMEs utilize the proceeds out of issue of equity shares for purchase of new plant and machinery within one year from the date of subscription, subject to fulfillment of other prescribed conditions. Capital gains will be subject to tax if shares of the SME or the plant and machinery are transferred by the SME within a period of five years from the date of its acquisition.

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

The general principles of taxation in respect of income from other sources in the case of individuals are similar to those of a corporation, as discussed in L.2.2.iv, page number 232. However, certain transactions are taxable only in the case of individuals or HUFs. These are discussed below.
NRIs (including PIOs) can exercise an option to be taxed at a flat rate of 20% on their gross investment income and a flat rate of 10% on their long-term capital gains on certain specified assets (without any deductions) arising from their foreign currency assets acquired in India through remittances in convertible foreign exchange.

Interest payable on savings banks or fixed deposits in India is taxable, and taxes are withheld at source by banks if the interest exceeds INR10,000 in the tax year. The interest payable by scheduled banks (on approved foreign currency deposits) to non-residents and not ordinary residents, is exempt from tax.

**Taxability of certain transactions**

Any sum of money received (in excess of INR50,000) without consideration is taxable in the hands of the recipient. Where any property other than immovable property is received for a consideration that is less than the fair value of the property by an amount exceeding INR50,000, the fair value reduced by the consideration received is taxable as income from other sources.

- Where immovable property or any other property is received without consideration and the stamp or fair value of such property exceeds INR50,000, the stamp or fair value of such property is taxable as income from other sources.

- Where immovable property is received for a consideration and such consideration is less than the stamp value of the property by an amount exceeding INR50,000, the stamp value reduced by the consideration received is taxable as income from other sources.

- If the date of agreement fixing the consideration value for the transfer is different from the date of registration of the transfer, the stamp duty value as on the date of agreement for transfer will be considered. This will apply only where part or full consideration is paid by any mode other than cash on or before the date of agreement for transfer.

- The provisions given above are not applicable where the sum of money or property is received from a relative on the occasion of the individual’s marriage, under a will or inheritance, in contemplation of the death of the payer or donor, or from a local authority, approved fund or trust.
L.8.3 Deductions

For individuals, a deduction of up to INR100,000 can be claimed from their gross total income for prescribed contributions to savings instruments and pension funds. Furthermore, a deduction can be claimed from gross total income for payment of tuition fees for the education of specified family members. In addition, interest paid on loans obtained to pursue higher education (senior secondary education or above) is fully deductible. However, no deduction is available for repayment of the principal amount. Furthermore, an additional deduction of INR100,000 can be claimed by individuals, who are first-time home buyers, for interest on housing loans taken from financial institutions in respect of a residential property, subject to certain conditions.

Individuals with a gross total income of up to INR1.2m investing for the first time in listed securities and listed units of equity-oriented funds under the Rajiv Gandhi Equity Scheme are eligible for a deduction of up to INR25,000. The deduction is available in three consecutive FYs.

A deduction of INR10,000 will be available to individuals and HUFs in respect of interest on deposits (excluding time deposits) in a savings account with a banking company, specified cooperative society or post office.

Health insurance premiums for recognized policies in India paid for insurance of the health of an individual or their family can be deducted, up to a maximum of INR15,000 (INR20,000 if insured person is more than 60 years) from their gross total income. An additional deduction of up to a maximum of INR15,000 (INR20,000 if the insured person is more than 60 years of age) is available for health insurance for the parents of the individual. Payment made for preventive health check-ups for up to INR5,000 will also be eligible for deduction within the limit mentioned above.
L.8.4 Income tax rates (individuals)

The following tax rates have been proposed that will apply to resident and non-resident individual taxpayers for the year ending 31 March 2014.

<table>
<thead>
<tr>
<th>Income levels (INR)</th>
<th>Income tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–200,000*</td>
<td>Nil</td>
</tr>
<tr>
<td>200,001–500,000</td>
<td>10% of income in excess of INR200,000</td>
</tr>
<tr>
<td>500,001–1,000,000</td>
<td>INR30,000 plus 20% of income in excess of INR500,000</td>
</tr>
<tr>
<td>1,000,001 upward</td>
<td>INR130,000 plus 30% of income in excess of INR1,000,000</td>
</tr>
</tbody>
</table>

A surcharge of 10% of the total tax liability will be applicable where the total income exceeds INR10m. The tax (inclusive of surcharge) is further increased by education cess at 3%. Long-term capital gains are not taxed according to the above slab rates, but at a base rate of 20%.

*Resident individuals with an income of up to INR200,000 do not need to pay income tax and education cess. The exemption limit is INR250,000 for resident individuals above 60 years and below 80 years of age. In the case of very senior citizens (defined as individuals above the age of 80 years), the exemption limit is INR500,000.

For a sample tax calculation, see Appendix 6.3.
L.9 Income tax filing and payment process

All income is taxed on the basis of FY from 1 April to 31 March. All taxpayers, including non-residents, must file a ROI if their income exceeds the maximum amount that is not liable to taxation. Furthermore, every resident (excluding not ordinary residents) owning any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India is required to furnish a ROI even if their income does not exceed the maximum amount that is not liable to taxation. Return forms for certain taxpayers who avail DTAA relief has been prescribed.

Certain classes of persons are exempted from the requirement of filing a ROI, subject to conditions. Broadly, these are individuals whose total income for the relevant year does not exceed INR0.5m and consists of only income under the head salaries and other sources, and in whose case the whole of the tax liability is discharged by the way of withholding by employer.

An electronic filing is mandatory for companies, firms or associations of persons (AOP) liable to tax audits and any other assessee with a total income exceeding INR0.5m.

ROI for salary income need to be filed by 31 July. ROIs for self-employment or business income must also be filed by 31 July or, if accounts are subject to a tax audit, by 30 September every year. Wealth tax returns for individuals need to be filed by the same deadline applicable to them as in the case of income tax returns.

India does not have the concept of joint filing. Married couples are therefore taxed separately. The passive income of minor children is aggregated with that of the parent with higher income.

Taxpayers with income earned from employment pay tax through tax withheld by their employer from their monthly salaries in each pay period. Taxpayers with tax liability exceeding INR10,000 need to make advance tax payments, after deducting credit for tax withheld, in three instalments on 15 September, 15 December and 15 March every year. However, a resident senior citizen not having income from business or profession is not liable to pay advance tax.
Non-residents are subject to the same filing requirements as residents. However, non-residents and NRI nationals (including PIOs) who only have investment income or long-term capital gains (on foreign exchange assets) need not file a ROI if the required tax is withheld at source. Non-residents are subject to the same assessment procedure as residents.

Before leaving India, any individual who is not domiciled in the country is required to furnish an undertaking to the prescribed authority and obtain a No Objection Certificate (NOC) if the person has been in India to engage in business, professional or employment activities and has derived income from these activities. Such undertakings must be obtained from the individual’s employer or the payer of the income, and these undertakings must state that the employer or the payer of income will pay the tax payable by the individual. An exemption to obtain a NOC is granted to foreign tourists or individuals visiting India for purposes other than business or employment, regardless of the number of days spent by them in the country. At the time Indian nationals domiciled in India depart from the country, they need to provide their PAN, the purpose of their visit and the estimated period of their stay outside India to the prescribed authority. However, a person domiciled in India can also be required to obtain a NOC in certain specified circumstances.
L.10 Other direct taxes (individuals)

L.10.1 Wealth tax

In India, wealth tax is payable at the rate of 1% if the taxable value of an individual’s net wealth exceeds INR3m. Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewelry bullion, precious metals, cash in excess of INR50,000 and commercial property not used as business, office or factory premises. The assets mentioned above, other than urban land, are exempt from tax if they are owned as stock in trade or used for hire. Additionally, one house or part of house (whether residential or commercial) or a plot of land not exceeding 500 sq.m is also exempt. Productive assets, including shares, debentures and bank deposits, are not subject to wealth tax. A deduction is allowed for debts owed that have been incurred with relation to taxable assets. Tax is levied on net wealth as of 31 March of the tax financial year.

L.10.2 Social Security Tax

Social security in India is governed by the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The EPF Act contains the following two principal schemes:

- Employees’ Provident Funds Scheme, 1952
- Employees’ Pension Scheme, 1995

Coverage

The Ministry of Labour and Employment has issued notifications extending the applicability of the Provident Fund and Pension Scheme rules to a new class of employees called international workers. Under the EPF Act, the following employees are considered to be international workers:

- An Indian employee (an Indian passport holder) who has worked or is going to work in a foreign country with which India has entered a social security agreement and who is or will be eligible to avail the benefits under a social security program of that country, in accordance with such an agreement
- A foreign national who works for an establishment in India to which the EPF Act applies
The EPF Act applies to the following establishments:

- An establishment employing 20 or more persons engaged in a specified industry or an establishment or class of establishments notified by the GOI
- An establishment employing less than 20 persons that voluntarily opts to be covered by the EPF Act

Covered employers must make a contribution toward the Provident and Pension Fund for their employees who are international workers.

An excluded employee is not covered by the EPF Act. An employee is considered to be an “excluded employee” if the following conditions are satisfied:

- The employee is an international worker who is contributing to a social security program of their country of origin, either as citizen or resident.
- The employee’s home country has entered either:
  - A social security agreement with India and the employee has obtained certificate of coverage under the social security agreement
  - A bilateral comprehensive economic agreement with India containing a clause on social security prior to 1 October 2008 that specifically exempts natural personals of either country to contribute to the social security fund of the host country

India has entered social security agreements with Belgium, Germany, Switzerland, Luxembourg, France, the Netherlands, Denmark, Hungary, the Czech Republic, South Korea, Norway, Japan, Sweden, Canada, Austria, Portugal and Finland. Of these the agreements with Hungary, the Czech Republic, Norway, Japan, Sweden, Austria, Portugal, Canada and Finland have not yet been brought into force.
Following are the benefits of social security agreements:

- They provide for exemption from social security contributions in the case of short-term contracts. It also saves the employee from additional burden of social security costs of the host country.

In the case of long-term deputation:

- They provide for payment of pension benefits directly, without any reduction, to the beneficiary choosing to reside in their home country or any other country.
- Total contribution period, i.e., the period of service rendered in a foreign country, is counted while determining eligibility for benefits. It is also beneficial in the case of long-term deputation.

**Contribution**

Every covered employer is required to contribute 24% (12% each for the employer’s and the employee’s share) of the employee’s “monthly pay” (as defined) toward the provident fund and pension fund. “Pay” would mean to include basic wages, dearness allowance, retention allowance and cash value of any food concession. The employer has the option to recover the employee’s share from the employee.

Out of the employer’s 12% share of the contribution:

- In respect of international workers – 8.33% of monthly “pay” is allocated to the Employees’ Pension Fund
- In respect of local employees – 8.33% of INR6,500 per month is allocated to the Employees’ Pension Fund

The balance of the contributions is deposited in the Employees’ Provident Fund.

Local employees drawing a monthly salary of INR6,500 or more can opt out of the scheme, although this option is not available to international workers. Consequently, contributions are required for international workers even if the monthly pay of the employee exceeds INR6,500.

Refunds of Provident Fund contributions are possible, subject to the satisfaction of certain conditions.

The employer contributions are exempt from tax up to 12% of monthly pay.
Withdrawal

Provident fund

An international worker can withdraw from his Provident Fund only in the following cases:

- On retirement or on reaching the age of 58 years, whichever is later
- On account of permanent and total incapacitation

However, in respect of members covered under a Social Security Agreement (SSA), withdrawal may be made on such terms as may be specified and agreed in the respective SSA.

Pension fund

SSA country:

- In the case of 10 years of service or more in totality – receive monthly pension after retirement
- In the case of less than 10 years of service – eligible to withdraw as per the respective SSA

Non-SSA country:

- In the case of 10 years of service or more in India – receive monthly pension after retirement
- In the case of a less than 10 years of service – no withdrawal is permissible
L.11. General anti-avoidance rules

General Anti-Avoidance Rules (GAAR) has been introduced in the IT Act to address aggressive tax planning and codify the doctrine of “substance over form.” The effective date is deferred to 1 April 2015.

Under GAAR provisions, where the main purpose of an arrangement is to obtain a tax benefit, it will be considered as an “impermissible avoidance agreement.”

Once an agreement is declared to be an impermissible avoidance agreement, then the consequences in relation to tax of the arrangement, including denial of tax benefit or a benefit under a DTAA, is determined, keeping in view the circumstances of the case. The onus of demonstrating that the arrangement is not entered into only for deriving tax benefit is on the taxpayer.
L.12 Direct Taxes Code Bill, 2010

Direct Taxes Code Bill, 2010 (DTC 2010) marks a new era in the Indian tax scenario after more than 50 years of operation of the current IT Act. DTC 2010 appears to broadly retain the scheme of the existing IT Act, but under a modified structure. It intends to lend simplicity, flexibility and stability to the taxation system and also to reduce the scope for ambiguity and litigation.

With regard to taxability of income, DTC 2010 classifies the total income into "ordinary source" (includes income from employment, house property, business income, capital gains and income from the residuary sources) and "special source" (such as winnings from lottery in the case of non-residents). Furthermore, with regard to the rate of taxes, there has not been much change under the DTC 2010 compared with the IT Act. The key tax rates proposed under the DTC 2010 are enumerated below, along with comparative figures contained under the existing IT Act:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Current tax rates under the IT Act</th>
<th>Tax rates under the DTC 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic company</td>
<td>30%</td>
<td>30%</td>
</tr>
<tr>
<td>Foreign company</td>
<td>40%</td>
<td>30%</td>
</tr>
<tr>
<td>Branch profit tax (BPT)</td>
<td>Not applicable</td>
<td>15% (new tax)</td>
</tr>
<tr>
<td>DDT</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>MAT</td>
<td>18.5% of adjusted book profits</td>
<td>20% of adjusted book profits</td>
</tr>
<tr>
<td>Wealth tax</td>
<td>1% on net wealth exceeding INR3m</td>
<td>1% on net wealth exceeding INR10m</td>
</tr>
</tbody>
</table>

*Excluding surcharge and education cess

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147 The Direct Taxes Code Bill, 2009 (DTC 2009) was earlier released by the GOI for public comments along with a discussion paper on 12 August 2009. Based on the feedback from various stakeholders, a Revised Discussion Paper (RDP) was released on 15 June 2010 addressing some of the major identified issues. After considering the concerns expressed as a part of public consultation process, the DTC 2010 was placed by the GOI before the Indian Parliament on 30 August 2010 and is envisaged to come into force from 1 April 2012. After the DTC 2010 is approved by both houses of the Indian Parliament and receives the President's assent, it would be enacted as law. Once enacted, DTC 2010 would repeal the current ITL.
With regard to taxation of income from letting of house property, DTC 2010 provides that such income should be taxed under the head of “income from house property,” notwithstanding that letting is in the nature of trade, commerce or business subject to exception in respect of SEZs, hotels, hospitals, convention centers and cold storage. Furthermore, standard deduction on account of repairs and maintenance is reduced from the existing 30% of net annual value under the IT Act to 20% of the gross rent under DTC 2010. However, DTC 2010 does not contemplate taxing vacant or self-occupied property on a deemed basis as provided under existing IT Act, which is a welcome move.

With regard to the taxability of business income, DTC 2010 provides for a similar regime as contained under the current IT Act. However, DTC 2010 proposes a wide scope for taxing businesses as compared to the IT Act. Furthermore, an important change proposed by the DTC 2010 is that every business will constitute a separate source of income, necessitating separate computation of income for each business separately. Deduction of business expenditure is allowed under three broad categories — operating expenditure, permitted financial charges and capital allowances. No deduction for any expenditure is allowed for income from special sources. Moreover, DTC 2010 does not provide for set-off of losses between ordinary source and special source.

Under DTC 2010, it is also proposed that all assets will be classified into business assets and investment assets. The business assets will be further classified into business trading assets and business capital assets. The income from transactions in all business assets will be
taxed under the head “business income.”

Income from transactions in all investment assets, i.e., other than business assets, will be taxed under the head “capital gains.” The current distinction between short-term investment assets and long-term investment assets under the IT Act, on the basis of length of holding of the asset, will be eliminated, except that, for assets transferred after a year of holding, the indexation benefit will be available in the computation of capital gains. However, an exception in this regard has been provided in the case of equity shares or units of an equity-oriented fund (listed securities) on which STT has been paid. In this regard, where the aforesaid listed securities is held by the taxpayer for a period of more than one year (i.e., long-term securities), a 100% deduction will be available from capital gains arising from transfer of such securities and, in cases where the aforesaid listed securities are held for a period of up to one year (i.e., short-term securities), deduction will be restricted to 50%. Furthermore, the base date to determine the cost of acquisition under the IT Act, i.e., 1 April 1981, will be shifted to 1 April 2000. As a result, appreciation in value of the asset until 1 April 2000 will not be liable to tax under the DTC 2010.

DTC 2010 also seeks to replace profit-based tax holiday incentives (as provided under IT Act) with investment-based incentives. Under the investment-based tax incentive scheme, the taxpayer will be allowed to recover all capital and revenue expenditure (except land, goodwill and financial instrument) and will be liable to tax on profits made thereafter. The period consumed in recovering all capital and revenue expenditure will be the period of tax holiday.

With regard to levy of MAT, DTC 2010 has adopted the same approach as provided under the existing IT Act for levying MAT with reference to
“book profits,” but with an enhanced tax rate of 20% (18.5% under the IT Act).

DTC 2010 has further proposed some of the significant changes in the international tax regime as well. Some of the key proposals in this regard are described below:

- A foreign company will be considered as an Indian tax resident if its “place of effective management” (POEM) is situated in India. In this regard, POEM is defined to mean:
  - The place where the board of directors (BOD) or executive directors (EDs) make their decisions
  - Where the BOD routinely approve commercial and strategic decisions made by ED/officers, the place where ED/officers make such decisions
- Introduction of Controlled Foreign Company (CFC) regime as an anti-avoidance measure aimed to provide for the taxation of passive income earned by a foreign company that is directly or indirectly controlled by a resident in India
- Levy of branch profit tax (BPT) on BO of foreign companies in India, etc.

Furthermore, the current IT Act enables a taxpayer to choose between a DTAA and the IT Act, whichever is more beneficial to it, subject to a valid TRC. DTC 2010 adopts the same principle in this regard. However, provisions of DTC 2010 will continue to apply irrespective
of beneficial DTAA provisions if GAAR is invoked or in cases where provisions of CFC are attracted or on levy of BPT.

Overall, DTC 2010 proposes some key changes in the direct tax legislation in India aimed at eliminating distortions in the tax structure, introducing moderate levels of taxation, expanding the tax base, improving tax compliance, simplifying the language and lowering tax litigations. However, DTC 2010 is currently in the draft stage. One has to wait and watch on how the final DTC Bill is enacted. Once it is passed by the Parliament, it will be possible to assess the actual impact on the business community. Recently, the Finance Minister announced that redrafting the DTC Bill is work in progress, based on recommendations made by the Parliamentary Standing Committee.
<table>
<thead>
<tr>
<th>Code</th>
<th>Heading</th>
<th>Page</th>
</tr>
</thead>
<tbody>
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<td>262</td>
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<td>M.5</td>
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<tr>
<td>M.6</td>
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<td>267</td>
</tr>
</tbody>
</table>
Transfer pricing

Comprehensive transfer pricing regulation (TPRs) were introduced, effective 1 April 2001, with the objective to prevent MNCs from manipulating prices in intragroup transactions, e.g., by transferring their profits outside India.

Transfer pricing provisions in India are generally in line with the transfer pricing guidelines for MNCs and tax administrators issued by the Organisation for Economic Co-operation and Development (OECD). However, there are some significant differences, e.g., Indian guidelines encompass a wider definition of the term “associated enterprise” and follow the concept of arithmetic mean, as opposed to statistical measures of median or arm’s length range followed internationally.

Under TPRs, any international transaction (ITN) between two or more associated enterprises (including PEs) must be at arm’s length price (ALP). These regulation also apply to cost-sharing arrangements. For the computation of ALP, TPRs require the application of the most appropriate of the following methods:

- Comparable uncontrolled price method
- Resale price method
- Cost-plus method
- Profit-split method
- Transactional net margin method
- Any method that takes into account the price of the same or similar uncontrolled transaction between non-associated enterprises, under similar circumstances, considering all the relevant facts

TPRs do not mandate a hierarchy of methods.

If more than one ALP is determined, the TPRs mandate the use of the arithmetic mean of such prices. If the variation between the ALP and the price of ITN does not exceed a prescribed percentage of transfer price, the ITN is considered to be at arm’s length. The CBDT had issued a Circular on 15 April 2013, notifying that the prescribed percentage should not vary by more than 3% of the transfer price in all of the cases (except for wholesale traders, where the allowable variation has been set at 1% of the transfer price).
TPRs require taxpayers entering into ITNs to maintain prescribed documents and information, and also to obtain and furnish an accountant’s report, which includes prescribed details related to the ITNs being carried out, to the tax authorities. The due date for filing the accountant’s report, both for corporate and non-corporate taxpayers, is 30 November of the year following the end of the relevant FY.

The prescribed documents include details of the ownership structure, description of the functions performed, risks undertaken and assets used by the parties in the relevant transaction, etc. Failure to maintain the documentation required by TPRs or to furnish the report of a chartered accountant results in the imposition of a penalty.

<table>
<thead>
<tr>
<th>Nature of default</th>
<th>Possible penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to keep and maintain documents and information with respect to an ITN</td>
<td>An amount equal to 2% of the value of the ITN</td>
</tr>
<tr>
<td>Failure to furnish the documents or information required by TPRs</td>
<td>An amount equal to 2% of the value of the ITN for each such failure</td>
</tr>
<tr>
<td>Failure to report any ITN that is required to be reported</td>
<td>An amount equal to 2% of the value on the ITN for each such failure</td>
</tr>
<tr>
<td>Maintenance or furnishing of any incorrect information or documents</td>
<td>An amount equal to 2% of the value on the ITN for each such failure</td>
</tr>
<tr>
<td>Failure to furnish the report of a chartered accountant mandated by TPRs</td>
<td>INR100,000</td>
</tr>
</tbody>
</table>

According to TPRs, enterprises are considered to be “associated” if there is direct or indirect participation in the management, control or capital of an enterprise or by the same persons in both the enterprises. Furthermore, TPRs suggest certain other deeming provisions that also trigger an associated enterprise relationship. Some of the important ones among these include:

- Direct/indirect shareholding giving rise to 26% or more of voting power
- Dependence on a source of raw material/consumables, as well as on customers in the case of manufactured/processed goods, price and other conditions being influenced by the contracting party
- Authority to appoint more than 50% of the BOD or one or more of EDs, or members of the governing board of the other enterprise
- Dependence on borrowings, i.e., advancing loans amounting to not less than 51% of the total assets of the enterprise or providing a guarantee amounting to not less than 10% of the total borrowings

**M.1 Definition of ITNs**

- TPRs define ITN as a transaction between two or more associated enterprises, either or both of whom are non-residents and have a bearing on the profits, income, losses or assets of such enterprises. Amendments to the Finance Act 2012 have clarified the meaning of ITN. Accordingly, ITN now cover the following:
  - Transactions of business restructuring or reorganization
  - Financial transactions such as capital financing, including any type of long-term or short borrowing or lending or provision of guarantee, etc.
  - Services related to market research, scientific research, market development and legal or accounting services
  - Purchase, sale, transfer, lease or use of tangible property, including building, plant and machinery, vehicles or any other article, product or thing
  - Purchase, sale, transfer, lease or use of any intangible has been defined to include marketing, technology, artistic activity, goodwill, location, customer lists, customer contracts, methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, technical data, etc.)

**M.2 Safe harbor rules**

According to the amendment of the Finance Act (no. 2) 2009, the determination of ALP with respect to ITN is subject to safe harbor rules, which the CBDT is empowered to draft. Safe harbor indicates circumstances under which tax authorities accept a transfer price declared by a taxpayer. Recently, safe harbor rules are notified by the CBDT.
M.3 Dispute resolution panel

Please refer to L7.1, page number 237.

M.4 Specified domestic transactions

The Finance Act 2012 has brought certain specified domestic Transactions SDTs (not being ITNs), where the aggregate of such transactions exceeds INR50m, within the ambit of TPRs, with effect from 1 April 2013. The SDTs are as follows:

- Any expenditure incurred in favor of any domestic related party
- Any deductions claimed while computing taxable income that have related party transactions
- Transactions with related domestic companies or units eligible for tax holiday; the amendments will primarily affect the following taxpayers:
  - Taxpayers with income from SEZ units
  - Developers of SEZs
  - Infrastructure developers
  - Developers of industrial parks
  - Telecommunication service providers
  - Producers or distributors of power
  - Commercial producers of mineral oil or natural gas and refiners of mineral oil
  - Eligible housing projects
  - Eligible hospitals
  - Eligible hotels and convention centers
  - Eligible taxpayers with units in northeastern states
- Any other transaction, as may be specified
M.5 Advance pricing arrangements

The Finance Act 2012 has introduced an enabling provision, effective 1 July 2012, which empowers the CBDT to enter into Advanced Pricing Arrangements with taxpayers to determine ALP or to specify the manner in which an ALP is to be determined in relation to the ITN to be entered with the taxpayer. Some of the salient features of the provisions are as follows:

- APAs are likely to be applicable only for the specific ITN to be entered into.
- APAs will be applicable for a maximum period of five consecutive years.
- An APA will be binding on income tax authorities and the taxpayer, in respect of the transaction in relation to which the APA has been entered into.
- An APA will be declared void if it is found to be obtained by fraud or misrepresentation of facts.
- Taxpayers are required to modify their returns of income in accordance with the APA within three months from the end of the month of entering the APA.
- The AO will have to assess or reassess taxpayers in accordance with the APA concluded and the modified returns of income.
- The CBDT, which has already set up a separate team under the Director General of Income Tax, International Taxation (the APA Authority) for negotiating APAs, has recently notified the APA rules. The rules contain procedures for APA applications, information, data and forms that need to be filed, etc.
- In the first cycle of applications, which ended on 31 March 2013, the APA Authority received approximately 150 applications. The majority of these (approximately 120) were for unilateral APAs, while the remaining (approximately 30) were for bilateral APAs. The process of discussions and negotiations has now started, with the APA Authority issuing questionnaires and holding meetings with taxpayers and representatives.
M.6 Changes in Transfer pricing regulations

The Finance Act 2012 has made the following amendments to Transfer Pricing Regulation (TPRs):

- The proviso benefit of the arm's length range has been amended retrospectively with effect from 1 April 2002 so that the arithmetic mean of ALP will be considered to be the ALP if the difference between the arithmetic mean and the taxpayer’s transfer price is greater than 3% (set at 1% for wholesale traders). Furthermore, the range is computed from the transfer price and not from ALP.

- Effective 1 June 2002, the transfer pricing officer is entitled to evaluate and determine ALP of any transaction that comes to his notice, irrespective of whether it has been disclosed in the accountant’s report filed with the AO.

- The non-furnishing of a report in respect of an ITN will now be grounds for reopening assessment proceedings.
## Indirect taxes

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Indirect taxes

The Central Government levies indirect taxes comprising customs duty, excise duty, central sales tax and service tax. The states are empowered to levy profession tax and state sales tax apart from various other local taxes, including entry tax and octroi or local body tax.

N.1 Customs duty

Customs duty is levied by the GOI on the import of goods into India and is typically payable by the importer. It is also levied on the export of certain goods.

Customs duty rates depend on classification under the customs tariff, which is aligned with the International Harmonized System of Nomenclature, with the generic rate being 28.85%.

Customs duty typically comprises the following components:

- Basic Customs Duty (BCD)
- Additional Customs Duty (CVD) – in lieu of excise duty
- Education cess/secondary and higher education cess
- Special Additional Customs Duty (SAD)

The CVD paid on the import of goods is allowed as credit against the output excise/service tax liability, subject to conditions, whereas, SAD paid on the import of goods is allowed as credit only to a manufacturer against the output excise duty and not to an output service provider, subject to conditions.

In the case of import from related parties, the matter is typically referred to the special valuation branch authorities by the customs authorities prima facie to determine if the assessable/transaction value is at arm's length. Accordingly, the relevant customs-related procedures would need to be fulfilled.
N.2 Excise duty

Excise duty is applicable on the manufacture of goods within India and is payable by the manufacturer.

Most products attract a uniform rate of 12% plus education cess at 3% of the excise duty, making the effective excise duty at 12.36% i.e., excise duty of 12% and education cess of 0.36% (3% on excise duty).

Excise duty is typically levied on an ad valorem basis, expressed either as a percentage of the transaction value or maximum retail price (for certain specified goods). Goods manufactured in India can be exported without the payment of excise duty, subject to specified conditions. Inputs used in the manufacture of goods to be exported can also be procured without payment of excise duty, subject to conditions.

The Cenvat Credit Rules, 2004 allow manufacturers to take credit for specified duties, including excise duty, CVD and SAD paid on varied inputs and capital goods imported, as well as service tax paid on input services used in the manufacture of excisable goods. Manufacturers can utilize such credit to pay excise duty applicable on the final goods manufactured. Furthermore, credit of duty paid on capital goods will be available to the extent of 50% during the first FY of its receipt, and the balance in the subsequent period.

A lower excise duty of 2% has been provided on 131 specified goods (for which Cenvat credit would not be available) which were hitherto fully exempt or chargeable at zero excise duty. Alternatively, an option to avail Cenvat credit by charging a duty of 6% on 68 specified items is also available.
N.3 Service tax

Service tax is applicable on the provision of services in India. It is also applicable on the import of services in India, where the service recipient is required to discharge service tax liability in cash (under the reverse-charge mechanism). The current rate of service tax is 12.36% i.e., 12% service tax and education cess of 0.36%(3% on service tax).

The GOI has introduced a negative list-based taxation of services with effect from 1 July 2012. In view of this, except 17 negative services (mainly provided by or to the GOI or state governments, health care services, agriculture, trading, etc.) and 39 specifically exempt services, all other services are taxable unless these entail:

- Sale or purchase of goods (including deemed sale)
- Transfer or gift of immovable property
- Transaction in money or actionable claim
- Service provided by employee to employer in the course of employment

For certain specified services, the onus of paying service tax is partly on the service provider and partly on the service recipient (for example, hiring of a motor vehicle, and supply of manpower and works contract services when provided by an individual, HUF, partnership firm or AOP to a body corporate).

Services provided outside India will not be liable to service tax. Such services will be deemed as exports, subject to the fulfilment of conditions. In respect of services that qualify as exports, the GOI has introduced a mechanism that prescribes an option for the exporter to claim rebate/refund of excise duty/CVD/service tax paid on input/input services used for export of service.
The place of Provision of Services Rules, 2012 (PPOS) have been introduced with effect from 1 July 2012 to determine the place where a service shall be deemed to be provided. A service shall be taxable only when inter alia it is provided in the taxable territory (i.e., India, excluding Jammu and Kashmir). In other words, the taxability of a service will be determined based on its place of provision according to the PPOS.

According to the Point of Taxation Rules, 2011, the point of taxation for payment of service tax shall be the date of issue of the invoice or the date of receipt of payment for service by the service provider, whichever is earlier. However, in cases where the invoice is not raised within 30 days of completion of the provision of service, the point of taxation shall be the date of such completion. In the case of services provided continuously or on a recurrent basis for a period exceeding three months, under a contract and with an obligation for periodic payment, the date of completion shall be the date of completion of each event, as specified under such contract. Furthermore, where the service recipient is required to pay service tax under a reverse-charge mechanism (i.e., as the importer of service), the point of taxation shall be the date on which such payment is made (provided that payment is made within six months from the invoice date). If services are availed from foreign associated entities, the point of taxation shall be the date of payment or the date of booking, whichever is earlier.

The Credit Rules allow a service provider to take credit of duties, including excise duty, CVD paid on inputs, and capital goods and service tax paid on input services used to provide taxable output services, subject to conditions. Also, a service recipient is allowed to take credit of the service tax paid on the import of services in cash against its output excise or service tax liability.

Credit of SAD paid on the import of goods cannot offset output service tax liability. There is no credit of duty or tax paid on input/input services that are used exclusively to provide non-taxable or exempt services.
N.4 Value added tax and Central sales tax

VAT is an intrastate multi-point tax system administered at the state level and is levied on the sale of goods at each stage of the sale. Currently, all of the states in India have replaced their erstwhile sales tax regime with VAT.

The basic rate slabs under VAT are as follows:

- Natural and unprocessed products and other essential goods are non-taxable under VAT
- Special goods such as gold, bullion, silver, etc are taxed at 1% to 2%
- Agricultural and industrial input, IT products, capital goods and intangible goods, i.e., patents and others, as well as items of basic necessity are taxed at 4% to 5%
- All other goods that do not fall under any of the categories mentioned above are taxed at 12.5% to 15%

Interstate sales continue to be liable to Central Sales Tax (CST), which is imposed by the GOI and administered by state Governments. The rate of CST is 2% subject to the provision of prescribed declaration form by the purchaser. In the absence of a prescribed declaration form, the VAT rate as applicable in the selling state will apply (i.e., ranging from 4% to 5% to 12.5% to 15%). Declaration forms are only issued when the goods are procured for (i) resale, (ii) for use in manufacture or processing of goods for sale, (iii) a telecommunications network, (iv) for use in mining or (v) for use in generation or distribution of electricity or any other form of power.

It is proposed that the CST will be phased out on the introduction of GST.

Furthermore, a sale involving the import of goods from outside India is not liable to VAT or CST, subject to the prescribed conditions. Moreover, the sale of goods (including the penultimate sale) involving the export of goods from India is also not liable to VAT or CST.

Input tax credit is available with respect to VAT paid on locally procured goods, including capital goods (other than the “negative list” of goods provided under respective state VAT laws). Credit can be set off against output VAT liability, including output CST. However, no input credit is available in respect of the CST paid on procurements and, hence, it is a cost to the purchaser.
N.5 Octroi or entry tax

Entry tax or octroi is levied by state/local authorities on goods that enter their jurisdiction for the purpose of use, consumption or sale. The tax/Octroi is levied on the purchase value of the goods. For this purpose, the state is divided into separate local areas. The value of the entry tax levied on different products can vary across states.

It is relevant to note that the constitutional validity of entry tax laws is currently a subject of dispute. The applicability and status of the dispute needs to be examined on a state-to-state basis.

Octroi is applicable in Maharashtra at various local municipal jurisdictions. The rate varies from 2% to 7%. Octroi paid is a cost, as no credit is available. Cess was payable in lieu of Octroi in some areas of Maharashtra (i.e., Navi Mumbai). It is now replaced by a new similar levy, i.e., Local Body Tax (LBT). Furthermore, it has been proposed that LBT should replace Octroi in Maharashtra with effect from 1 October 2013. Discussions are presently being undertaken for the extension of this date. The rate of LBT will vary from 0% to 8%.

N.6 Research and development cess

The research and development cess is levied by the GOI at 5% on the import of technology by an industrial concern into India in terms of a foreign collaboration or other specified cases. This cess is to be paid by the importer of technology on payments made for such imports.

“Technology” has been defined to mean special or technical knowledge or a special service required by an industrial concern under any foreign collaboration, including designs, drawings, publications and technical personnel.

The service tax legislation exempts the taxable service involving the import of technology from a fixed amount of the service tax leviable, as is equivalent to the amount of cess paid on the import of technology.
N.7 Other significant indirect taxes

N.7.1 Stamp duty

Stamp duty is a tax imposed on instruments as per the Indian Stamp Act, 1899 and other Stamp Acts. It is levied on a number of instruments such as the Articles of Association (AOA) of a company, memorandum of association of a company, conveyance, bill of exchange, bill of lading and partition. The payment of the appropriate stamp duty is essential and lends legality to instruments. An inadequately stamped instrument is not admissible as evidence. All instruments chargeable with stamp duty and executed by a person in India have to be stamped before or at the time of the execution.

If an instrument is not duly stamped, it can be impounded by the authorized person and, in some cases, can also lead to penalty or imprisonment. Stamp duty can be paid by using stamp paper, adhesive stamps or by franking, and has to be paid by the person executing the instrument, i.e, by the person who puts their signature on the instrument. The rate of stamp duty payable varies across states.

N.7.2 Profession tax

Profession tax is a state levy on professions, trades, a calling or employment in a state. Thus, every person who is engaged in any of the activities mentioned above is liable to pay profession tax. Not all of the state governments levy profession tax currently.

In states where such a levy exists, every enterprise, as well as every employee earning a salary, is required to register and pay profession tax. In the case of salaried employees, the employer is required to deduct profession tax from the salary paid to its employees at specified rates and deposit it into the GOI treasury. The employer is liable to pay the requisite amount of profession tax on such salaries or wages, irrespective of whether it has deducted an equivalent amount from the salaries paid.

Furthermore, employers, businessmen, professionals, etc. are also required to pay profession tax at specified rates in their own capacity.
N.7.3 STT

STT is levied on the value of a taxable securities transaction, as depicted below:

<table>
<thead>
<tr>
<th>Transaction</th>
<th>Rates</th>
<th>Payable by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase or sale of equity shares (delivery based)</td>
<td>0.1%</td>
<td>Purchaser/seller (both)</td>
</tr>
<tr>
<td>Purchase of units of equity-oriented mutual funds (delivery based)</td>
<td>Nil</td>
<td>Purchaser</td>
</tr>
<tr>
<td>Sale of units of equity-oriented mutual funds (delivery based)</td>
<td>0.001%</td>
<td>Seller</td>
</tr>
<tr>
<td>Sale of equity shares, units of equity-oriented mutual funds (non-delivery based)</td>
<td>0.025%</td>
<td>Seller</td>
</tr>
<tr>
<td>Sale of an option in securities</td>
<td>0.017%</td>
<td>Seller</td>
</tr>
<tr>
<td>Sale of an option in securities, where an option is exercised</td>
<td>0.125%</td>
<td>Purchaser</td>
</tr>
<tr>
<td>Sale of futures in securities</td>
<td>0.01%</td>
<td>Seller</td>
</tr>
<tr>
<td>Sale of units of equity oriented funds to a mutual fund</td>
<td>0.001%</td>
<td>Seller</td>
</tr>
<tr>
<td>Sale of unlisted equity shares under an offer for sale to the public included in an initial public offer and where such shares are subsequently listed on a recognized stock exchange</td>
<td>0.2%</td>
<td>Seller</td>
</tr>
</tbody>
</table>

N.7.4 Luxury tax

Luxury tax is a state levy that is imposed on the hospitality industry on certain specified facilities and luxuries that are provided by them. The tax is ordinarily levied on the turnover of receipts for the provision of accommodation and certain other facilities. It is usually not applicable on turnover from the supply of food and drink on which VAT is paid. Anyone liable to pay luxury tax has to get a certificate of registration from the concerned state authority, without which continuation of the business would not be possible.
N.7.5 Property tax

Property tax is a municipal tax that is ordinarily imposed on the owner of the property (usually real estate). It is an important source of revenue for the maintenance of basic civic services in a city. The amount of tax is calculated on the value of the property that is sought to be taxed (ad valorem basis) at the applicable rate.

N.7.6 Entertainment tax

State and local governments levy entertainment tax on various entertainment and amusement activities. Traditionally, film exhibitions, cable or DTH subscriptions, video games, amusement parks and events have been subject to entertainment tax. Entertainment provided through telecom and internet is also subject to entertainment tax. Entertainment tax rates are fairly high compared with taxes levied on other luxury goods and services and are based on the relevant state and the entertainment activity. For example, the entertainment tax rate for a movie exhibition in Mumbai is as high as 45% while the Rajasthan Government provides an exemption from entertainment tax. Furthermore, a number of states offer benefits to new multiplexes, sports events and certain films, subject to specific conditions.
N.8 GST legislation

The GOI has proposed the replacement of the indirect tax regime in India by a comprehensive dual GST, to be levied concurrently by the center (CGST) and the states (SGST). It is anticipated that the base for the GST will be comprehensive, including virtually all goods and services, with minimum exemptions. The GST structure will follow the destination principle, i.e., imports will be included in the tax base, while exports will be zero rated. In the case of interstate transactions within India, state tax will apply in the state of destination, as opposed to that of origin.

The following are the key taxes proposed to be subsumed under the GST:

<table>
<thead>
<tr>
<th>Central taxes</th>
<th>State taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Central excise duty</td>
<td>- VAT or sales tax</td>
</tr>
<tr>
<td>(including additional excise duties)</td>
<td>- Entry tax not in lieu of Octroi</td>
</tr>
<tr>
<td>- Service tax</td>
<td>- Entertainment tax (other than entertainment tax levied by local bodies)</td>
</tr>
<tr>
<td>- CVD</td>
<td>- Stamp duty</td>
</tr>
<tr>
<td>- SAD</td>
<td>- Taxes on vehicles</td>
</tr>
<tr>
<td>- Surcharges and cesses</td>
<td>- Taxes on goods and passengers</td>
</tr>
<tr>
<td>- CST</td>
<td>- Taxes and duties on electricity</td>
</tr>
<tr>
<td></td>
<td>- Luxury tax</td>
</tr>
<tr>
<td></td>
<td>- State cesses and surcharges</td>
</tr>
<tr>
<td></td>
<td>- Taxes on lottery, betting and gambling</td>
</tr>
</tbody>
</table>

The following are the key taxes not to be subsumed under the proposed GST:

<table>
<thead>
<tr>
<th>Central taxes</th>
<th>State taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Customs and export duties</td>
<td>- Excise duty on alcohol</td>
</tr>
<tr>
<td>- Duties of excise on specified petroleum products, natural gas and tobacco</td>
<td></td>
</tr>
</tbody>
</table>
The full input credit system will operate parallely for CGST and SGST. GST paid on the procurement of goods and services will be available for credit against that payable on the supply of goods or services. The consumer, being the last person in the supply chain, will bear the tax, with no right to input tax credit. Cross-utilization of input tax credit between CGST and SGST will not be permitted.

GST has been envisaged as a more efficient tax system than the current one, as it will widen the tax base, do away with the multiplicity of taxes and the cascading effects, minimize competitive distortions and encourage better compliance.

The new tax structure will have a significant impact on all businesses, manufacturers, traders and service providers, and on all aspects of their activities, including supply chains and logistics, product pricing, dealer margins, and IT and accounting systems.

Many of the design features of the GST are yet to be finalized. They are being discussed by the GOI and the states.

On 16 March 2011, the Constitution (One Hundred and Fifteenth Amendment) Bill, 2011 (GST Bill) was introduced in the Parliament to introduce articles affecting the introduction of the GST and the introduction of the GST Council. According to the existing structure of indirect taxation, the Parliament has the power to make laws on the manufacture of goods and the provision of services, while the state legislatures have power to make laws on the sale and purchase of goods within their respective states. The Parliament has retained control to make laws pertaining to the sale of goods in the course of interstate trade or commerce.
The key highlights of the GST Bill are listed below:

- Article 246A has been introduced for enabling concurrent powers to levy GST.
- GST has been defined to mean any tax on the supply of goods or services, or both, except taxes on the supply of petroleum crude, high-speed diesel (HSD), petrol, natural gas, aviation turbine fuel (ATF) and alcoholic liquor for human consumption.
- State governments will have the power to levy tax on the sale of petroleum crude, HSD, petrol, natural gas, ATF and alcoholic liquor for human consumption. Municipalities or Panchayats will have the power to levy tax on the entry of goods into local areas for consumption, use or sale therein and tax on entertainment and amusement.
- The Parliament will be given exclusive powers to levy GST on interstate trade imports, exports and apportion revenues between states and the Central Government, constitute GST Council, constitute GST Dispute Settlement Authority, etc.

The GOI had expressed its intention to introduce a national-level GST by 1 April 2012. However, keeping in mind the current state of affairs, the expected date of implementation of GST is still uncertain. A clear road map for implementation of GST is awaited.

The GOI is taking other positive and concrete steps toward the introduction of GST and to ensure a smooth transition from the current system. For this, the Finance Minister of India, while presenting the Union Budget 2012, had proposed to make the GST network operational, i.e., to implement common PAN-based registrations, returns and payments processing for all states on a shared platform. Furthermore, announcements were made while presenting the Union Budget 2012 that suggested an overwhelming majority of the states are in favor of GST and also that a provision of INR90b for CST compensation has been agreed upon.
Incentives

0.1 Direct tax incentives
  0.1.1 Profits from new undertakings
  0.1.2 Free trade zones, software technology parks (STPs), hardware technology parks (HTPs)
  0.1.3 Investment-linked incentives
  0.1.4 Incentives for R&D
  0.1.5 Additional deduction for wages paid to new workmen

0.2 SEZs
  0.2.1 Introduction
  0.2.2 Computation of profits from exports
  0.2.3 Indirect tax incentives for SEZ units
  0.2.4 Incentives for developers of SEZs
  0.2.5 Key measures to revive investors’ interest in SEZs

0.3 State-level incentives
  0.3.1 Export incentives under FTP
Incentives

0.1 Direct tax incentives

The GOI, for the purpose of accelerated growth of the Indian economy, has extended incentives in the form of tax holiday, deductions, rebates, etc., under direct or indirect taxes. Primarily, such incentives relate to export promotion, new industrial undertakings, infrastructure facilities, software industry, research, promotion of under developed areas, etc.

Herein, we have briefly referred to incentives provided under the IT Act. The provisions will need to be read with the terms and conditions specific to each incentive provided in the law.

The incentives have been classified under the following broad categories:

0.1.1 Profits from new undertakings

New undertakings are those that are formed by means other than the division or reconstruction of a business already in existence or the transfer of machinery or plant, previously used in India for another purpose (subject to certain exceptions), to a new business. The following table details the available tax incentives:

<table>
<thead>
<tr>
<th>Nature of business undertaken</th>
<th>Quantum of deduction</th>
<th>Commencement period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undertakings engaged in generation or generation and distribution of power</td>
<td>100% for 10 years (out of the first 15 years)</td>
<td>1 April 1993 to 31 March 2014</td>
</tr>
<tr>
<td>Undertakings engaged in laying a network of transmission or distribution lines</td>
<td>100% for 10 years (out of the first 15 years)</td>
<td>1 April 1999 to 31 March 2014</td>
</tr>
<tr>
<td>Undertakings engaged in carrying out substantial renovation and modernization of existing transmission or distribution lines</td>
<td>100% for 10 years (out of the first 15 years)</td>
<td>1 April 2004 to 31 March 2014</td>
</tr>
</tbody>
</table>
Nature of business undertaken | Quantum of deduction | Commencement period
--- | --- | ---
Developing or operating and maintaining infrastructure facilities such as:  
- A road, including toll road, a bridge or a rail system  
- A highway project, including housing or other activities being an integral part of the highway project  
- A water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system  
- A port, airport, inland waterway, inland port or navigational channel in the sea | 100% for 10 years (out of the first 20 years)* | On or after 1 April 1995
Operating and maintaining a hospital (with at least 100 beds) | 100% for the first 5 years | 1 April 2008 to 31 March 2013
A hotel in a specified district, which has a World Heritage Site | 100% for the first 5 years | 1 April 2008 to 31 March 2013

Incentives for oil and gas sector

<table>
<thead>
<tr>
<th>Nature of business undertaken</th>
<th>Quantum of deduction</th>
<th>Commencement period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial production of mineral oil</td>
<td>100% for the first 7 years</td>
<td>On or after 1 April 1997</td>
</tr>
<tr>
<td>Commercial production of natural gas in licensed blocks</td>
<td>100% for the first 7 years</td>
<td>On or after 1 April 2009</td>
</tr>
</tbody>
</table>

* In the case of ports, airports, inland waterways, inland ports and navigation channels in the sea, the exemption is available for 10 years falling within the period of the first 15 years.
### Incentives for undertakings in specified geographical locations

<table>
<thead>
<tr>
<th>Nature of business undertaken</th>
<th>Quantum of deduction</th>
<th>Commencement period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permitted activities in the northeastern states:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Manufacturing or producing eligible article or thing or substantial expansion in connection therewith</td>
<td>100% for the first 10 years</td>
<td>1 April 2007 to 31 March 2017</td>
</tr>
<tr>
<td>• Hotel (not below two-star category)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Adventure and leisure sports, including ropeways</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Providing medical and health services in the nature of a nursing home with a minimum capacity of 25 beds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Manufacture of IT-related hardware</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Biotechnology</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Operational vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and paramedical, civil aviation-related training, fashion designing and industrial training</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• IT-related training center</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Old age home</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other incentives</td>
<td>100% for the first 5 years</td>
<td>On or after 1 April 2001</td>
</tr>
<tr>
<td>Processing, preservation and packaging of fruits or vegetables or from the integrated business of handling, storing and transporting food grains</td>
<td>30% for the next 5 years*</td>
<td></td>
</tr>
</tbody>
</table>

Northeastern states comprise Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

*25% in the case of non-companies.
<table>
<thead>
<tr>
<th>Nature of business undertaken</th>
<th>Quantum of deduction</th>
<th>Commencement period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collecting and processing or treating of biodegradable waste for generating power or producing biofertilizers, biopesticides or other biological agents or for producing biogas or making pellets or briquettes for fuel or organic manure</td>
<td>100% for the first 5 years</td>
<td>On or after 1 April 1998</td>
</tr>
</tbody>
</table>

Profit-linked incentives are no longer available for potential investments, though deduction will continue to be available up to the time period specified in the IT Act for the following eligible existing businesses set up in earlier years:

- Provision of telecommunication services (whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services)
- Processing, preservation and packaging of meat or meat products, poultry, marine or dairy products
- Development or Development and maintenance/operations and maintenance of an industrial park notified by the Central Government
- Reconstruction or revival of a power-generating plant
- Manufacture or production of article or thing or operation of cold storage plant by industrial undertaking in industrially backward states/industrially backward districts
- An Indian company undertaking scientific research and development as its main object
- Establishment and operation of a cold chain facility for agricultural produce
• Operation and maintenance of a hospital in a rural area
• Manufacture or production of any article or thing in the specified states other than those specified in the Thirteenth Schedule
• Manufacture or production of any article or thing specified in the Fourteenth Schedule in the specified states
• Hotel located in specified area
• Build, own and operate a convention center in a specified area

O.1.2 Free-trade zones, software technology parks, hardware technology parks

Profit-linked incentives are no longer available for potential investments, though deduction will continue to be available up to the time period specified in the IT Act for the following eligible existing businesses set up in earlier years:

• An undertaking set up in a Free-trade zones (FTZs), software technology parks (STP) or hardware technology parks (HTP) and engaged in the manufacture or production of articles or things or computer software
• An undertaking declared as a 100% export-oriented undertaking (EOU) engaged in the manufacture or production of articles or things or computer software

O.1.3 Investment-linked incentives

Deduction for specified businesses

To encourage the diversion of profits from the taxed sector to the exempt or non-taxcd sector, investment-linked incentives in the form of deduction for capital expenditure (excluding expenditure incurred on acquisition of land, goodwill or financial instrument) incurred prior to the commencement of operations shall be allowed for specified businesses mentioned in the following table. Such expenditure has to be capitalized in the books of account on the date of commencement of business.
<table>
<thead>
<tr>
<th>Nature of expense</th>
<th>Quantum of deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being integral part of such network</td>
<td>100%</td>
</tr>
<tr>
<td>Building and operating a new hotel of a two-star or above category as classified by the GOI</td>
<td>100%</td>
</tr>
<tr>
<td>Building and operating a new hospital (with at least 100 beds)</td>
<td>150%</td>
</tr>
<tr>
<td>Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the GOI or state governments and that is notified by the CBDT in this behalf in accordance with the guidelines prescribed</td>
<td>100%</td>
</tr>
<tr>
<td>Developing and building a housing project under a scheme for affordable housing framed by the GOI or state governments and that is notified by the CBDT in this behalf in accordance with the guidelines prescribed</td>
<td>150%</td>
</tr>
<tr>
<td>Producing fertilizer in a new plant or in a newly installed capacity in an existing plant</td>
<td>150%</td>
</tr>
<tr>
<td>Setting up and operating an inland container depot or a container freight station notified or approved by the Customs Act, 1962</td>
<td>100%</td>
</tr>
<tr>
<td>Beekeeping and production of honey and beeswax</td>
<td>100%</td>
</tr>
<tr>
<td>Setting up and operating a cold chain facility</td>
<td>150%</td>
</tr>
<tr>
<td>Setting up and operating a warehousing facility for storage of agricultural produce</td>
<td>150%</td>
</tr>
<tr>
<td>Setting up and operating a warehousing facility for storage of sugar</td>
<td>100%</td>
</tr>
</tbody>
</table>
0.1.4 Incentives for R&D:

<table>
<thead>
<tr>
<th>Nature of expense</th>
<th>Quantum of deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue expenditure incurred on payment of salary to an employee engaged in</td>
<td>100%</td>
</tr>
<tr>
<td>scientific research or on purchase of materials used in such scientific research</td>
<td></td>
</tr>
<tr>
<td>during the three years preceding the commencement of business</td>
<td></td>
</tr>
<tr>
<td>Payment to a research association or university, college or other institution</td>
<td>175%</td>
</tr>
<tr>
<td>for scientific research</td>
<td></td>
</tr>
<tr>
<td>Payment to an Indian company to be used for scientific research and development</td>
<td>125%</td>
</tr>
<tr>
<td>that fulfills certain conditions</td>
<td></td>
</tr>
<tr>
<td>Payment to a research association/university or college or other institution</td>
<td>125%</td>
</tr>
<tr>
<td>for research in social science or statistical research (notified by the GOI)</td>
<td></td>
</tr>
<tr>
<td>Capital expenditure incurred in any FY and within the three years immediately</td>
<td>100%</td>
</tr>
<tr>
<td>preceding the FY (other than on acquisition of land)</td>
<td></td>
</tr>
<tr>
<td>Expenditure by a company engaged in biotechnology, or in the manufacture or</td>
<td>200%</td>
</tr>
<tr>
<td>production of any article or thing (except those mentioned in the Eleventh</td>
<td></td>
</tr>
<tr>
<td>Schedule) for scientific research on approved in-house research and development</td>
<td></td>
</tr>
<tr>
<td>facility (other than expenditure on land or building) incurred up to 31 March</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td></td>
</tr>
<tr>
<td>Payment to a National Laboratory/University/Institute of Technology/specified</td>
<td>200%</td>
</tr>
<tr>
<td>person (notified by the GOI) for scientific research undertaken under an</td>
<td></td>
</tr>
<tr>
<td>approved program</td>
<td></td>
</tr>
</tbody>
</table>

Deduction for specified projects notified by the CBDT:

Deduction will be available at 150% of the expenditure incurred on the following:

- Agricultural extension project notified as below:
  - For training, education and guidance of farmers
  - Prior approval to be obtained from the Ministry of Agriculture, and the GOI
  - Expenditure (excluding expenditure on land or building) expected to be incurred for the project exceeds an amount of INR2.5m
- Skill-development project (excluding expenditure on land or building) to be notified by the CBDT

Accelerated depreciation

Any new machinery or plant (other than the specified machinery or plant) acquired and installed by an undertaking engaged in the business of manufacture or production of any article or thing, or in the business of generation or generation and distribution of power, is entitled to additional depreciation of a sum equal to 20% of the actual cost of such machinery or plant.
Incentive for acquisition and installation of a new asset

Any new asset being plant and machinery acquired and installed during the period from 1 April 2013 to 31 March 2015, the aggregate value of which exceeds INR1b, by an company engaged in the business of manufacture or production of an article or thing is entitled to a deduction of the following sum:

FY14 –
15% of the aggregate amount of the actual cost of new assets acquired and installed during the FY13, if the cost of such assets exceeds INR1b.

FY15 –
15% of the aggregate amount of the actual cost of new assets acquired and installed during the period from 1 April 2013 to 31 March 2015, as reduced by the deduction allowed, if any, for AY 2014-15.

The new asset* acquired for taking the benefit should not be transferred for a period of five years, other than in the case of amalgamation and demerger. Additional incentive shall be over the normal depreciation allowable on the assets.

O. 1.5 Additional deduction for wages paid to new workmen

A deduction of an amount of 30% of additional wages paid to new regular workmen employed is allowed from profits derived by an Indian company from “any industrial undertaking engaged in manufacture or production” of article or thing.

The above deduction is allowed for three financial years, including the year of employment of new workmen. The deduction will be allowed to an Indian company deriving profits from the manufacture of goods in a “factory” as defined under the Factories Act, 1948.

No deduction will be allowed if the factory is hived off, transferred from another existing entity or acquired by amalgamation.

*A new asset is defined to exclude used plant and machinery, plant and machinery installed in office premises or residential accommodation and office appliances, including computers or software, vehicles, ships or aircraft, or any other plant and machinery the actual cost of which is allowed as a deduction while computing income from profit and gains from a business or profession.
0.2 SEZs

0.2.1 Introduction

SEZs are a specifically delineated duty-free enclave deemed to be a foreign territory for the limited purpose of trade operations, duties and tariffs. With the SEZ scheme, the GOI aims to promote export-led growth, supported by an integrated infrastructure for export production and a package of incentives to attract foreign and domestic investment.

The SEZ Act, 2005, supported by SEZ Rules, came into effect on 10 February 2006. It provides for a simplification of procedures and for single-window clearance on matters related to the Central Government, as well as State Governments. The new SEZ policy focuses on the creation of an internationally competitive and hassle-free environment for exports.

0.2.2 Computation of profits from exports

Undertakings located in SEZs and engaged in the manufacture or production of articles or things or in the provision of services are eligible to claim 100% deduction in respect of export profits for five years. For the next 10 years, deduction of 50% of the profits is allowed (for the last five years, deduction is subject to transfer of profits to investment reserve).

Although a tax holiday is enjoyed by units in SEZs, they are required to pay MAT on book profits and DDT on income distributed as dividend.

0.2.3 Indirect tax incentives for SEZ units

SEZ developers and units are eligible to avail exemption of customs duty on the import of goods, excise duty on locally procured goods, CST on interstate sale/purchase of goods and service tax on taxable services received for carrying out authorized operations. The above benefits/exemptions are commonly available, subject to the fulfillment of prescribed procedures and conditions.
Similarly, exemption or concessions from local levies such as VAT, entry tax, stamp duty, registration charges and electricity duty are available only in states where the state governments have granted such exemption from local state levies.

O.2.4 Incentives for the developers of SEZs

SEZ developers are eligible to claim 100% deduction of their business profits for 10 years (out of 15 years), beginning from the year in which the SEZ is notified by the GOI.

Although a tax holiday is enjoyed by units in SEZs, they are required to pay MAT on book profits and DDT on income distributed as dividend.

Tax holiday for offshore banking units and international financial services centers located in SEZs

A scheduled bank or an offshore banking unit of a foreign bank or a unit of international financial services center located in the SEZ is eligible to claim a 100% deduction in respect of the specified income for five years and 50% for the next five years.

O.2.5 Key measures to revive investors’ interest in SEZs

The annual supplement (2013-14) to FTP has introduced a package of measures to revive investors’ interest in SEZs and to boost exports.

- Reduction in the minimum land requirement by half of the original size for multiproduct SEZs and sector-specific SEZs. There is no such requirement for IT/ITES SEZs, and minimum built up is the only criterion to be met; this has also been considerably relaxed.
- Introduction of a graded scale for minimum land criteria to permit an SEZ unit an additional sector for each contiguous 50 hectare parcel of land
- Introduction of sectoral broad-banding to provide flexibility in setting up additional units in a sector-specific SEZ
- Introduction of an exit policy to permit the transfer of ownership of SEZ units, including its sale
O.3 State-level incentives

A number of states are looking to attract investments to set up new units or expand existing units to develop infrastructure and education, as well as create employment. For these purposes, states offer many investment-linked incentives.

Concessions/exemptions to a large and mega unit are typically granted, depending on the quantum of investment proposed to be made, strategic importance of the project, proposed employment and other similar criteria.

Exemptions/incentives that are provided to investing units typically depend upon negotiations between the parties involved (i.e., the investor and the respective state governments) and varies across states and sometimes even governments.

State-level incentives are the new investment drivers, especially as specific area-based exemption schemes granted by the GOI in Himachal Pradesh, Uttaranchal, and the Kutch district of Gujarat have reached its exhaustion. These benefits are still available in the Northeastern region.

O.3.1 Export incentives under FTP

India’s FTP covers policies related to fiscal incentives, rationalized procedures, increased access to global markets and diversification of its export market.

The policy provides for certain export promotion schemes such as:

- Export Promotion Capital Goods - to allow the import of capital goods at a zero-duty rate (i.e., at nil rate of duty) for the production of export output, subject to the fulfillment of export obligation up to six times of the duty saved
• Advance Authorization and Duty Free Import Authorization to enable duty-free procurement of inputs required for the manufacturing of goods to be exported, subject to fulfillment of the export obligation.

Served from India Scheme (SFIS): service providers with service exports outside India worth INR1m or more in the current FY are eligible to claim the benefit of the duty credit script under the SFIS; service providers can utilize such duty credit scripts for the payment of customs duties on the import of goods in India or for the payment of excise duty on procuring goods manufactured in India.
## Appendices

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<th>Description</th>
<th>Page</th>
</tr>
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<td>319</td>
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<tr>
<td>6.3</td>
<td>Sample tax calculation</td>
<td>321</td>
</tr>
</tbody>
</table>
## Appendix 1: Useful addresses and telephone numbers

<table>
<thead>
<tr>
<th>Organization</th>
<th>Address</th>
<th>Telephone</th>
<th>Fax</th>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Securities and Exchange Board of India</td>
<td>Plot No.C4-A, ‘G’ Block, Bandra-Kurla Complex Bandra (East), Mumbai 400051</td>
<td>+22 2644 9000/4045 9000</td>
<td>+22 2644 9016-20/4045 9016-20</td>
<td><a href="http://www.sebi.gov.in">www.sebi.gov.in</a></td>
</tr>
<tr>
<td>Ministry of Corporate Affairs</td>
<td>“A’ Wing, Shastri Bhawan Rajendra Prasad Road</td>
<td>+11 2338 4158/2338 4660/2338 4659</td>
<td>+11 2321 3294</td>
<td><a href="http://www.mca.gov.in">www.mca.gov.in</a></td>
</tr>
<tr>
<td>Telecom Regulatory Authority of India</td>
<td>Mahanagar Doorsanchar Bhawan (next to Zakir Hussain College) Jawaharlal Nehru Marg (Old Minto Road)</td>
<td>+11 2323 6308/2323 3466/2322 0534/2321 3223</td>
<td>+11 2321 3294</td>
<td><a href="http://www.trai.gov.in">www.trai.gov.in</a></td>
</tr>
<tr>
<td>Central Revenue Building (Income Tax Office)</td>
<td>IIP Estate</td>
<td></td>
<td></td>
<td><a href="http://www.incometax.gov.in">www.incometax.gov.in</a></td>
</tr>
<tr>
<td>Directorate General of Shipping</td>
<td>J ahaz Bhavan, Walchand H. Marg Mumbai 400 001</td>
<td>+22 2261 3651-4</td>
<td>+22 2261 3655</td>
<td><a href="http://www.dgshipping.com">www.dgshipping.com</a></td>
</tr>
<tr>
<td>Central Drugs Standard Control Organization</td>
<td>FDA Bhavan, ITO, Kotla Road New Delhi 110002</td>
<td>+11 2323 6965/2323 6975</td>
<td>+11 2323 6973</td>
<td><a href="http://www.cdso.nic.in">www.cdso.nic.in</a></td>
</tr>
</tbody>
</table>
| **National Highways Authority of India** | National Highways Authority of India  
G 5 and 6, Sector-10, Dwarka  
New Delhi 110 075  
Telephone: +11 2507 4100/2507 4200  
Fax : +11 2509 3507/2509 3514  
Website: www.nhai.org |
| **Department of Commerce** | Department of Commerce  
Ministry of Commerce and Industry  
Udyog Bhawan  
New Delhi 110 107  
Telephone: +11 2306 2261  
Fax: +11 2306 3418  
Website: www.commerce.gov.in |
| **Ministry of Environment and Forests** | Paryavaran Bhavan  
CGO Complex, Lodhi Road  
New Delhi 110 003  
Telephone: +11 2436 0605/2436 0570/2436 0519  
Website: www.moef.nic.in |
| **Ministry of Mines** | 3rd Floor, A wing, Shastri Bhawan  
New Delhi 110001  
Telephone: +11 2307 3233  
Website: www.mines.nic.in |
| **Ministry of Steel** | GOI  
Udyog Bhavan  
New Delhi 110107  
Telephone : +11 2306 3417  
Fax : +11 2306 3236  
Website: www.steel.nic.in |
| **Ministry of Textiles** | Udyog Bhavan  
New Delhi 110011  
Telephone: +11 2306 1338/18/14  
Fax: +11 2306 3711/2306 3681  
Website: www.texmin.nic.in |
<table>
<thead>
<tr>
<th>Organization</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Banks Association</td>
<td>6th Floor, Center 1 World Trade Center Complex</td>
</tr>
<tr>
<td></td>
<td>Cuffe Parade</td>
</tr>
<tr>
<td></td>
<td>Mumbai 400005</td>
</tr>
<tr>
<td></td>
<td>Telephone: +22 2217 4040</td>
</tr>
<tr>
<td></td>
<td>Fax: +22 2218 4222</td>
</tr>
<tr>
<td></td>
<td>Website: <a href="http://www.iba.org.in">www.iba.org.in</a></td>
</tr>
<tr>
<td>Bulk Drugs Manufacturers Association</td>
<td>C-25, Industrial Estate</td>
</tr>
<tr>
<td></td>
<td>Near SBH, Sanath Nagar</td>
</tr>
<tr>
<td></td>
<td>Hyderabad 500018</td>
</tr>
<tr>
<td></td>
<td>Telephone: +40 2370 3910/6718</td>
</tr>
<tr>
<td></td>
<td>Fax: +40 2370 4804</td>
</tr>
<tr>
<td></td>
<td>Website: <a href="http://www.bdmai.org">www.bdmai.org</a></td>
</tr>
<tr>
<td>Association of Mutual Funds in India</td>
<td>One Indiabulls Centre</td>
</tr>
<tr>
<td></td>
<td>Tower 2, Wing B, 701, 7th Floor</td>
</tr>
<tr>
<td></td>
<td>841 Senapati Bapat Marg</td>
</tr>
<tr>
<td></td>
<td>Elphinstone Road</td>
</tr>
<tr>
<td></td>
<td>Mumbai 400 013</td>
</tr>
<tr>
<td></td>
<td>Telephone: +22 2421 0093/2421 0383/4334 6700</td>
</tr>
<tr>
<td></td>
<td>Fax: +22 4334 6712/4334 6722</td>
</tr>
<tr>
<td></td>
<td>Website: <a href="http://www.amfiindia.com">www.amfiindia.com</a></td>
</tr>
<tr>
<td>Chemicals and Petrochemicals Manufacturers’ Association</td>
<td>10th Floor, Vijaya Building</td>
</tr>
<tr>
<td></td>
<td>17 Barakhamba Road</td>
</tr>
<tr>
<td></td>
<td>Connaught Place</td>
</tr>
<tr>
<td></td>
<td>New Delhi 110001</td>
</tr>
<tr>
<td></td>
<td>Telephone: +11 2332 0608/2332 6377</td>
</tr>
<tr>
<td>All India Plastics Manufacturers’ Association</td>
<td>AIPMA House, A-52, Street No. 1</td>
</tr>
<tr>
<td></td>
<td>M.I.D.C. Marol, Andheri East</td>
</tr>
<tr>
<td></td>
<td>Mumbai - 400 093</td>
</tr>
<tr>
<td></td>
<td>Telephone: +22 2821 732425/2835 251112</td>
</tr>
<tr>
<td></td>
<td>Fax: +22 28216390</td>
</tr>
<tr>
<td></td>
<td>Website: <a href="http://www.aipma.net">www.aipma.net</a></td>
</tr>
</tbody>
</table>
| Organization of Pharmaceutical Producers of India | Peninsula Chambers, Ground Floor  
| Lower Parel  
| Mumbai 400 013.  
| Telephone: +22 2491 8123/2491 2486/6662 7007  
| Fax: +22 2491 5168  
| Website: www.indiaoppi.com |
| Association of Biotechnology Led Enterprises | ABLE Secretariat  
| 123/C, 16th Main Road  
| 5th Cross, 4th Block  
| Koramangala  
| Bangalore 560034  
| Telephone: +80 4163 6853/2563 3853  
| Website: www.ableindia.in |
| India Semiconductor Association | UNI Building  
| Millers Tank Bund Road  
| Bangalore 560 052  
| Telephone: +80 4147 3250  
| Fax: +80 4122 1866  
| Website: www.isaonline.org |
| The Indian Broadcasting Foundation | B-304, Third floor, Ansal Plaza  
| Khelgaon Marg, Andrewsganj  
| New Delhi 110049  
| Telephone: +11 4379 4444  
| Fax: +11 4379 4455  
| Website: www.ibfindia.com |
| Federation of Indian Export Organizations | Niryat Bhawan, Rao Tula Ram Marg  
| Opp. Army Hospital Research & Referral  
| New Delhi 110 057  
| Telephone: +11 4604 2222/2615 0101-04  
| Fax: +11 2614 8194/2615 0066/2615 0077  
| Website: www.fieo.org |
| Invest India | Federation House, Tansen Marg  
| New Delhi 110001, India  
| Telephone: +91 11 2376 8760 70  
| Fax: +91 11 2332 0714, 2372 1504  
| Website: www.investindia.gov.in |
Appendix 2: Exchange rates

The table below provides RBI reference exchange rates for the Indian rupee against the four major currencies as on 1 November 2013:

<table>
<thead>
<tr>
<th>Currency</th>
<th>Exchange rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>US dollar</td>
<td>61.74</td>
</tr>
<tr>
<td>Euro</td>
<td>83.25</td>
</tr>
<tr>
<td>UK pound</td>
<td>101.71</td>
</tr>
<tr>
<td>Japanese yen per 100 (JPY)</td>
<td>61.08</td>
</tr>
</tbody>
</table>

Source: State Bank of India (SBI)
Appendix 3: FDI policy

Illustrative list of sectors or activities in which FDI is prohibited/permitted with conditions or sectoral caps

Sectors or activities in which investment is prohibited in India:

- Lottery business, including government or private lotteries, online lotteries, etc.
- Gambling and betting, including casinos, etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real estate business or construction of farm houses
- Manufacture of cigars, cheroots, cigarillos and cigarettes made of tobacco or tobacco substitutes
- Activities or sectors not opened up to private sector investment, including atomic energy and railway transport (other than Mass Rapid Transport Systems).
- Collaboration on foreign technology in any form, including licensing for franchise, trademark, brand name, management contract for lottery business, and gambling and betting activities
Sector or activity permitted with conditions or sectoral caps

- Agriculture and animal husbandry
- Tea plantations
- Mining
- Petroleum and natural gas
- Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)
- Defense
- Broadcasting
- Print media
- Civil aviation
- Construction development – townships, housing and built-up infrastructure
- Industrial parks – new and existing
- Satellites – establishment and operation
- Private security agencies
- Telecom sector
- Trading (including single brand and multibrand retail trading)
- Asset reconstruction companies
- Banking – private and public sector
- Commodity exchanges
- Credit Information Companies (CICs)
- Infrastructure company in securities market
- Insurance
- NBFCs
- Pharmaceuticals
- Power exchanges
Appendix 4: Corporate tax calculation

The following example illustrates the computation of taxable income and tax liability of a domestic company for the tax year 1 April 2013 to 31 March 2014:

<table>
<thead>
<tr>
<th>Net profit as per financial statement</th>
<th>14,500,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less:</td>
<td></td>
</tr>
<tr>
<td>Net dividends received from domestic company (exempt from tax)</td>
<td>(2,000,000)</td>
</tr>
<tr>
<td>Income from sub-leased property (considered separately)</td>
<td>(2,200,000)</td>
</tr>
<tr>
<td>Add:</td>
<td>12,300,000</td>
</tr>
<tr>
<td>Provision for tax</td>
<td>9,000,000</td>
</tr>
<tr>
<td>Depreciation as per financial statements</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Disallowed expenses (such expenses are not related to the business)</td>
<td>12,200,000</td>
</tr>
<tr>
<td></td>
<td>24,500,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Less:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment allowance</td>
</tr>
<tr>
<td>Tax depreciation (5,560,000)</td>
</tr>
<tr>
<td>Business income</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income from other sources:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income from sub-leased property</td>
</tr>
<tr>
<td>Gross total income</td>
</tr>
</tbody>
</table>

**Taxable income**

| 18,640,000 |

Calculation of tax

| Income tax at 30% on Rs. 18,640,000 | 5,592,000 |
| Add: |
| Surcharge at 5% (since total income more than INR 10m) | 279,600 |
| Education cess at 3% | 176,148 |
| **Tax payable** | 6,047,748 |

<table>
<thead>
<tr>
<th>Less:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advance tax paid during the tax year</td>
</tr>
<tr>
<td>Balance tax payable or (refundable) with ROI</td>
</tr>
</tbody>
</table>
Appendix 5: DTAA rates

Under the IT Act, Indian companies must pay DDT at an effective tax rate of nearly 17% (a base rate of 15% plus a surcharge of 10% and an education cess of 3%) on dividends declared, distributed or paid by them. A higher effective tax rate of 22.66% (a base rate of 20% plus a surcharge of 10% and an education cess of 3%) applies on income distributed by way of buy back of shares by an unlisted Indian company. Such dividends and profit distributions are exempt from tax in the hands of the recipients. Accordingly, the relevant DTAA rates for dividends are not captured in the table below.

The following table presents the lower of the DTAA rate and the rate under the IT Act on outbound payments of interest and royalty to countries that have concluded DTAA with India:

<table>
<thead>
<tr>
<th>Country</th>
<th>Interest (%)</th>
<th>Royalty (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Australia (g)</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Austria</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Bangladesh (w)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Belarus</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Belgium</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>Botswana</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Brazil</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Canada</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>China</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Cyprus (v)</td>
<td>10/30</td>
<td>15/30</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Denmark</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Ethiopia (l)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Country</td>
<td>Interest (%)</td>
<td>Royalty (%)</td>
</tr>
<tr>
<td>-----------------------</td>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Estonia (p)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Finland</td>
<td>10 (e)</td>
<td>10 (e)</td>
</tr>
<tr>
<td>France</td>
<td>10 (e) (f)</td>
<td>10 (e) (f)</td>
</tr>
<tr>
<td>Germany</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Georgia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Greece</td>
<td>20</td>
<td>25</td>
</tr>
<tr>
<td>Hungary</td>
<td>10 (e)</td>
<td>10 (e)</td>
</tr>
<tr>
<td>Iceland</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Indonesia (m)</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Ireland</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Israel</td>
<td>10 (e)</td>
<td>10 (e)</td>
</tr>
<tr>
<td>Italy</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Japan</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Jordan</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>10 (e)</td>
<td>10 (e)</td>
</tr>
<tr>
<td>Kenya</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Korea</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Kuwait</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Kyrgyz Republic</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Libya</td>
<td>20</td>
<td>25</td>
</tr>
<tr>
<td>Lithuania (q)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Malaysia (r)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Malta (u)</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Mauritius</td>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>Mexico</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Country</td>
<td>Interest (%)</td>
<td>Royalty (%)</td>
</tr>
<tr>
<td>-------------------------</td>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Mongolia</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Montenegro</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Morocco</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Mozambique</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Myanmar</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Namibia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Nepal (o)</td>
<td>10</td>
<td>15 (e)</td>
</tr>
<tr>
<td>Netherlands</td>
<td>10 (e) (f)</td>
<td>10 (e)(f)</td>
</tr>
<tr>
<td>New Zealand</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Norway</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Oman</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Philippines</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Poland (k)</td>
<td>15</td>
<td>22.5</td>
</tr>
<tr>
<td>Portugal</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Qatar</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Romania</td>
<td>15</td>
<td>22.5</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Serbia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Singapore</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>Slovenia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>South Africa</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Spain (i)</td>
<td>15</td>
<td>20 (e)</td>
</tr>
<tr>
<td>Sri Lanka (n)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Sudan</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Sweden (h)</td>
<td>10 (e)</td>
<td>10 (e)</td>
</tr>
<tr>
<td>Country</td>
<td>Interest (%)</td>
<td>Royalty (%)</td>
</tr>
<tr>
<td>-------------------------</td>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Please see note (a) and (b) for all entries in this column</td>
<td>Please see note (c) and (d) for all entries in this column</td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>10 (e)</td>
<td>10 (e)</td>
</tr>
<tr>
<td>Syria</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Taiwan</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Taiwan</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Tanzania</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Thailand</td>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Turkey</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Uganda</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Ukraine</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>12.5</td>
<td>10</td>
</tr>
<tr>
<td>United Arab Republic</td>
<td>20</td>
<td>25</td>
</tr>
<tr>
<td>United Kingdom (j)</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>United States</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Uruguay (x)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Uzbekistan (s)</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Vietnam</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Zambia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Non-DTAA countries</td>
<td>20 (a)</td>
<td>25 (c)</td>
</tr>
</tbody>
</table>
a. A rate of 20% is specified where the relevant DTAA provides for unlimited taxation rights for the source country on interest income. Under the IT Act, the rate of 20% applies in respect of interest on monies borrowed, or debts incurred, in foreign currency by an Indian concern or government. Where the recipient is a foreign company, this rate is increased by a surcharge of 2% (where the aggregate income exceeds INR10m) and 5% (where the aggregate income exceeds INR100m) and is further increased by an education cess of 3% (on income tax and surcharge). A special reduced rate of 5% applies under certain specified circumstances. In other cases, depending on whether the recipient is a corporate entity or not, a tax rate of 30% or 40% applies. These tax rates need to be increased with the applicable surcharge and cess.

b. A reduced rate of 0% to 10% generally applies under a DTAA when interest payments are made to local authorities, political subdivisions, governments, banks, financial institutions or such similar organizations. A reduced rate may also apply where the lender holds a certain threshold of capital stake in the borrower. The text of the relevant DTAA would need to be examined.

c. A rate of 25% is specified where the relevant DTAA provides for unlimited taxation rights for the source country to tax royalty income. This rate provided under the IT Act applies where the payment is made by the GOI or an Indian concern. In other cases, as explained in note (a) above, a tax rate of 30% or 40% applies, which needs to be further increased by surcharge and cess.

d. The rate provided under the relevant DTAA applies to royalty not effectively connected with a PE in India. Also, in some of India's DTAAAs such as with Canada, Australia, Spain, the UK, and the United States, a separate rate of 10% is specified for equipment royalty. Similarly, in the case of India's DTAA with Bulgaria, a 15% rate applies to copyright royalties other than cinematograph films or films or tapes used for radio or television broadcasting. Furthermore, many of India's DTAAAs also provide for withholding tax rates for technical services fees. In most cases, the rates applicable to royalties also apply to the technical services fees. The text of the relevant DTAA would need to be examined to determine the relevant scope and rate.
e. A more restrictive scope of the definition of royalty and interest and/or a reduced rate may be available under the most favored nation clause in the relevant DTAA.

f. A reduced rate of 10% is mentioned on account of notifications issued by the GOI giving effect to the most favored nation clauses in these DTAA.

g. A protocol amending the India-Australia DTAA was signed on 16 December 2011. This inter alia provides for the effective exchange of banking and tax information, assistance in the collection of revenue claims, removal of the “force of attraction” clause in the business profits article and introduction of a non-discrimination article. The effective date of the protocol will be known after it is notified (press release).

h. A protocol amending the 1997 DTAA with Sweden was signed on 7 February 2013 and is effective from 16 August 2013. The protocol replaces the article concerning exchange of information in the existing DTAA (notification).

i. A protocol has been signed on 26 October 2012 to amend the 1993 India-Spain DTAA. The 2012 protocol facilitates in effective exchange of information, assistance in collection of taxes and prevention of abuse of the DTAA. It will come into force on completion of internal procedures in both the countries (press release).

j. A protocol amending the 1993 India UK DTAA was signed on 30 October 2012. Significant aspects of the protocol include insertion of LOB clause and special provisions to grant DTAA benefits to income earned by partnerships, estates or trusts where income is subject to tax in the country of residence either in the hands of the entity or in the hands of its partners or beneficiaries, provisions covering dividend taxation, exchange of information and assistance in tax collection including tax examinations abroad. The protocol will be effective after the completion of the procedures in both the countries for bringing it into force (press release).
k. A protocol amending the 1989 DTAA with Poland was signed on 29 January 2013. The protocol is not yet in force. Restricting “dividend” and “interest” taxation in the source country to 10% and “royalties and FTS” to 15% of the gross amount; exchange of information without domestic interest; exchange of banking and ownership information; and a new article on LOB are the salient features of this protocol (Indian Embassy, Warsaw, press release).

l. The DTAA with the Federal Democratic Republic of Ethiopia, signed on 25 May 2011, is effective in India from 1 April 2013.

m. A revised DTAA was signed with the Government of Indonesia on 27 July 2012. The notification for making the agreement effective is yet to be issued by the GOI (press release).

n. A new DTAA, expected to replace the 1982 DTAA with Sri Lanka, is reported to have been signed on 22 January 2013 (press release).

o. A revised DTAA with Nepal was signed on 27 November 2011, which is effective in India from 1 April 2013.

p. The DTAA with the Republic of Estonia, signed on 19 September 2011, is effective in India from 1 April 2013.

q. The DTAA with Lithuania, signed on 26 July 2011, is effective in India from 1 April 2013.

r. The DTAA with Malaysia, signed on 9 May 2012, is effective in India from 1 April 2013.

s. A protocol signed on 11 April 2012 amending the India-Uzbekistan DTAA is effective in India from 1 April 2013. This has reduced the rate on interest and royalty.

t. An enhanced rate of 25% applies on trademark royalties.

u. A revised DTAA has been signed with Malta on 15 April 2013. Once in force and effective, the revised DTAA will replace the present 1994 DTAA.
v. In 2011, a provision was introduced in the IT Act as an anti-avoidance tax measure. This provision, referred to as the “tool box” of counter measures in respect of transactions with persons located in a non-cooperative jurisdiction, empowered the Central Government to notify any foreign jurisdiction as non-cooperative, which does not exchange effective information. As a consequence, this provision provides for onerous tax consequences (including denial of deductions on payments made) by the Indian taxpayer in respect of transactions with persons located in the notified jurisdiction. On 1 November 2013, the Central Government notified Cyprus as a “notified jurisdiction area” for the purpose of this provision. Accordingly, the rate of tax withholding for any payment made to a person located in Cyprus is higher of 30% and the rate prescribed under the IT Act.

w. A protocol signed on 16 February 2013 amending the India-Bangladesh DTAA is effective in India from 13 June 2013. The protocol has replaced the article concerning “Exchange of Information” and “Students” in the existing DTAA.

x. The DTAA with Uruguay, signed on 8 September 2011, is effective in India from 1 April 2014.

Following is the list of countries with which new DTAAAs have been signed by India, but the text of the DTTAs are still to be issued and the rates are taken from various press releases:

<table>
<thead>
<tr>
<th>Country</th>
<th>Interest (%)</th>
<th>Royalty (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Bhutan</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Columbia</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Latvia</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>
Tax information exchange agreements entered by India

To exercise the powers conferred by Explanation 2 to Section 90 of the IT Act, the GOI has notified certain territories outside India as "specified territory" for the purposes of this section. This enables the GOI to initiate and negotiate agreements for the exchange of information for the prevention of evasion or avoidance of income tax and assistance in collection of income tax with these specified territories.

Following are the territories with which GOI has signed Tax information exchange agreements (TIEAs) and the agreements are in force:

<table>
<thead>
<tr>
<th>Sl no</th>
<th>Territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Argentina</td>
</tr>
<tr>
<td>2</td>
<td>Bahamas</td>
</tr>
<tr>
<td>3</td>
<td>Bahrain</td>
</tr>
<tr>
<td>4</td>
<td>Bermuda</td>
</tr>
<tr>
<td>5</td>
<td>British Virgin Islands</td>
</tr>
<tr>
<td>6</td>
<td>Cayman Islands</td>
</tr>
<tr>
<td>7</td>
<td>Gibraltar</td>
</tr>
<tr>
<td>8</td>
<td>Guernsey</td>
</tr>
<tr>
<td>9</td>
<td>Isle of Man</td>
</tr>
<tr>
<td>10</td>
<td>Jersey</td>
</tr>
<tr>
<td>11</td>
<td>Liberia</td>
</tr>
<tr>
<td>12</td>
<td>Monaco</td>
</tr>
</tbody>
</table>

Following are the territories with which GOI has signed TIEAs and the notifications for making the agreements effective are still to be issued by the GOI:

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Liechtenstein</td>
</tr>
<tr>
<td>2</td>
<td>Macau</td>
</tr>
</tbody>
</table>
Other developments on international taxation

i. The GOI signed a mutual agreement with the Swiss Confederation on 20 April 2012 for liberal interpretation of the identity requirements to provide information according to Article 26 of the DTAA. According to the aforesaid agreement, it has now been agreed that it would be sufficient if the requesting country indicates to the extent known, the name and address of any person believed to be in possession of the requested information.

ii. India had signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 26 January 2012 and ratified it by depositing the Instrument of ratification on 21 February 2012. On doing so, India became the first non-OECD, non-council of Europe country to become a party to this Convention. The Convention has come into effect in India from 1 June 2012, i.e., the date of entry into force of the Convention. It provides for exchange of information, simultaneous tax examinations, tax examinations abroad, assistance in recovery and measures of conservancy and service of documents. It can also facilitate joint audits and covers all taxes other than customs duties. Under the Convention, the national law rights and safeguards that limit obligations to provide assistance still apply. The Convention also imposes a number of safeguards to protect the confidentiality of the information exchanged. Signing countries are also free to make reservations regarding the taxes covered and the type of assistance to be provided. The Convention facilitates international cooperation for a better operation of Indian tax laws, while respecting the fundamental rights of taxpayers.
iii. To claim relief under a DTAA, a certificate of the non-resident being a resident of the relevant country, i.e. a TRC, needs to be furnished. Furthermore, the taxpayer is also required to provide documents and information prescribed under the IT Act.

iv. Section 95 of the IT Act, as effective from 1 April 2015, provides for GAAR, which seek to override a DTAA if the main purpose of an arrangement is to obtain a tax benefit. GAAR is an anti-abuse provision. CBDT has also notified rules for the application of GAAR.

v. The CBDT has revised the existing rule prescribing the manner and forms for furnishing information electronically by a person responsible for making any payment to a non-resident. The revised rule mandates reporting of certain additional information and a new format for furnishing information in revised forms. The revised rule and forms have come into force from 1 October 2013 and have widened the ambit of reporting remittances outside India.
Appendix 6.1: Individual income tax calculation

The following example illustrates the method of calculating taxable income and income tax liability of an individual for the tax year 1 April 2013 to 31 March 2014.

<table>
<thead>
<tr>
<th>Calculation of taxable income</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary and perquisites</td>
<td>430,000</td>
</tr>
<tr>
<td>Income from self-occupied property</td>
<td>0</td>
</tr>
<tr>
<td>Less interest paid on home loan (a) (limited to INR 150,000)</td>
<td>150,000</td>
</tr>
<tr>
<td>Capital gains (long-term on sale of property)</td>
<td>30,000</td>
</tr>
<tr>
<td>Interest income</td>
<td>20,000</td>
</tr>
<tr>
<td>Gross total income</td>
<td>330,000</td>
</tr>
<tr>
<td>Deductions allowable from the gross total income:</td>
<td></td>
</tr>
<tr>
<td>Medical insurance</td>
<td>(10,000)</td>
</tr>
<tr>
<td>Investments in: (b)</td>
<td></td>
</tr>
<tr>
<td>Provident fund</td>
<td>(20,000)</td>
</tr>
<tr>
<td>Life insurance</td>
<td>(10,000)</td>
</tr>
<tr>
<td>Other tax-saving investments</td>
<td>(20,000)</td>
</tr>
<tr>
<td>Bank interest (c)</td>
<td>(10,000)</td>
</tr>
<tr>
<td></td>
<td>(70,000)</td>
</tr>
<tr>
<td>Total income (d)</td>
<td>260,000</td>
</tr>
</tbody>
</table>

Calculation of tax liability

| Ordinary taxable income at rates from the personal income tax rate table (230,000-200,000) x 10% | 3,000 |
| Rebate (e)                                                                                         | 2,000 |
| Balance tax payable                                                                               | 1,000 |
a. An individual will be allowed an additional deduction of INR 100,000 toward interest on a housing loan, subject to satisfaction of certain conditions from the FY14.

The limit of INR150,000 is applicable in the case of self-occupied house property. In the case of let-out property, the actual interest payable is deductible.

b. Contributions or investments in the tax-saving plans will be allowed as deduction from the gross total income to the extent of INR100,000.

c. A deduction up to INR10,000 is available to an individual/ HUF from the gross total income toward interest on a saving bank account (not being time deposits) maintained with a bank/ cooperative society/ post office, and this deduction is applicable from the FY13 onward.

d. Taxable income consists of long-term capital gains (INR30,000) on the sale of property.

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

Note: In the case of a resident senior citizen and resident very senior citizen, the minimum taxable income threshold is INR250,000 and INR500,000 respectively, as against INR200,000 for any other individual.
## Appendix 6.2: Taxability of income items

<table>
<thead>
<tr>
<th>Compensation</th>
<th>Taxable</th>
<th>Non-taxable</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base salary</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Bonus</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Cost-of-living allowance</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Tax perquisite (employee's obligation of tax born by employer)</td>
<td>-</td>
<td>-</td>
<td>(b)</td>
</tr>
<tr>
<td>Rent-free housing</td>
<td>X</td>
<td>-</td>
<td>(c)</td>
</tr>
<tr>
<td>Utilities</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Children's education reimbursement</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Hardship allowance</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Entertainment allowance</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Other allowance</td>
<td>X</td>
<td>-</td>
<td>(a)</td>
</tr>
<tr>
<td>Moving expenses</td>
<td>-</td>
<td>X</td>
<td>(d)</td>
</tr>
<tr>
<td>Medical reimbursement</td>
<td>-</td>
<td>X</td>
<td>(e)</td>
</tr>
<tr>
<td>Value of meals provided during working hours</td>
<td>-</td>
<td>X</td>
<td>(f)</td>
</tr>
<tr>
<td><strong>Other items</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign-source personal ordinary income (interest and dividends)</td>
<td>-</td>
<td>X</td>
<td>(g)</td>
</tr>
<tr>
<td>Capital gains from sale of personal residence in home country</td>
<td>-</td>
<td>X</td>
<td>(g)</td>
</tr>
<tr>
<td>Capital gains from sale of other assets in home country (stocks and shares)</td>
<td>-</td>
<td>X</td>
<td>(g)</td>
</tr>
</tbody>
</table>
a. Compensation (including value of perquisites) paid for services performed in India are taxable in India, regardless of where the compensation is paid. Remuneration includes any salary payable to the employee for a rest or leave period that is preceded and followed by the performance of services in India and is provided for in the employment contract.

b. Tax paid by the employer is subject to multiple gross-up in the hands of the employee. However, tax paid on non-monetary benefits provided to an employee can be claimed as exempt, subject to the satisfaction of certain conditions.

c. The taxable value of a perquisite with respect to rent-free housing is calculated using a prescribed formula.

d. Moving expenses incurred at the time of transfer are not taxable in the hands of the employee, subject to the satisfaction of certain conditions.

e. Medical expenditures or reimbursements are exempt, subject to certain conditions and limits.

f. This item is not taxable, subject to satisfaction of certain conditions.

g. These items are non-taxable for individuals who are considered as not ordinarily residents or who are considered as non-residents, provided these are not received in or directly remitted to India.
Appendix 6.3: Sample tax calculation

The following is a tax calculation for an expatriate who was sent to India on 1 April 2013 for a period of two years. The calculation reflects the tax rates for the year ending 31 March 2014.

<table>
<thead>
<tr>
<th>Computation of taxable income (in US$)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic salary</td>
<td>120,000</td>
</tr>
<tr>
<td>Bonus</td>
<td>12,000</td>
</tr>
<tr>
<td>Employer pension contribution to home country plan (perquisite) (a)</td>
<td>8,400</td>
</tr>
<tr>
<td>Children education allowance (after exemption)</td>
<td>12,000</td>
</tr>
<tr>
<td>Cost of living allowance</td>
<td>24,000</td>
</tr>
<tr>
<td>Foreign-service premium</td>
<td>30,000</td>
</tr>
<tr>
<td>Housing utilities (perquisite value)</td>
<td>1,200</td>
</tr>
<tr>
<td>Total of salary, bonus and taxable allowances</td>
<td>207,600</td>
</tr>
<tr>
<td>Perquisite (b):</td>
<td></td>
</tr>
<tr>
<td>Rent paid by employer for unfurnished housing (lower of amount paid of US$36,000 or 15% of salary, bonus and taxable allowances, i.e., US$198,000, which equals US$29,700)</td>
<td>29,700</td>
</tr>
<tr>
<td>Taxable perquisite</td>
<td></td>
</tr>
<tr>
<td>Taxable income (US$)</td>
<td>237,300</td>
</tr>
<tr>
<td>Taxable income in Indian currency (US$237,300 X 61.74) (b)</td>
<td>14,650,902</td>
</tr>
<tr>
<td>Calculation of tax payable (INR)</td>
<td></td>
</tr>
<tr>
<td>Income tax</td>
<td>4,225,270</td>
</tr>
<tr>
<td>Surcharge at 10%</td>
<td>422,527</td>
</tr>
<tr>
<td>Tax payable</td>
<td>4,647,797</td>
</tr>
<tr>
<td>Education cess at 3%(INR)</td>
<td>139,433</td>
</tr>
<tr>
<td>Total tax payable (INR)</td>
<td>4,787,231</td>
</tr>
</tbody>
</table>

a. Employer contributions to a home-country plan can be claimed as non-taxable based on judicial precedents subject to satisfaction of certain conditions.

If an employee’s share of an Indian provident fund contribution is paid by the employer, it will be taxable in the hands of employee.
Notes
Notes
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Fax: + 91 124 464 4050

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Fax: + 91 11 4363 3200

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Tel: + 91 120 671 7171  
Fax: + 91 120 671 7171

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Pune - 411 006  
Tel: + 91 20 6603 6000  
Fax: + 91 20 6601 5900
## Compliance calendar for the period 1 January 2014 to 31 December 2014

### JANUARY 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 01 2014</td>
<td>Payment of excise and service tax liability for the month of December 2013 (other than e-payment)</td>
</tr>
<tr>
<td>06 01 2014</td>
<td>E-payment of excise and service tax liability for the month of December 2013</td>
</tr>
<tr>
<td>07 01 2014</td>
<td>Payment of taxes withheld in December 2013</td>
</tr>
<tr>
<td>10 01 2014</td>
<td>Filing of excise return for the month of December 2013</td>
</tr>
<tr>
<td>15 01 2014</td>
<td>Electronically file quarterly (Oct to Dec 2013) withholding tax returns in Forms 24Q/26Q/27Q</td>
</tr>
<tr>
<td>30 01 2014</td>
<td>Due date for issue of quarterly (Oct to Dec 2013) TDS/TCS certificate in respect of withholding for payments (other than salary) in Form 16A/27D</td>
</tr>
</tbody>
</table>

### FEBRUARY 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 02 2014</td>
<td>Payment of excise and service tax liability for the month of January 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 02 2014</td>
<td>E-payment of excise and service tax liability for the month of January 2014</td>
</tr>
<tr>
<td>07 02 2014</td>
<td>Payment of taxes withheld in January 2014</td>
</tr>
<tr>
<td>10 02 2014</td>
<td>Filing of excise return for the month of January 2014</td>
</tr>
</tbody>
</table>

### MARCH 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 03 2014</td>
<td>Payment of excise and service tax liability for the month of February 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 03 2014</td>
<td>E-payment of excise and service tax liability for the month of February 2014</td>
</tr>
<tr>
<td>07 03 2014</td>
<td>Payment of taxes withheld in February 2014</td>
</tr>
<tr>
<td>10 03 2014</td>
<td>Filing of excise return for the month of February 2014</td>
</tr>
<tr>
<td>15 03 2014</td>
<td>Payment of advance tax [100% of the estimated tax (as reduced by tax already paid, if any) for tax year 2013-14]</td>
</tr>
<tr>
<td>31 03 2014</td>
<td>Payment of excise and service tax liability for the month of March 2014 (including e-payment)</td>
</tr>
</tbody>
</table>

### APRIL 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 04 2014</td>
<td>Filing of excise return for the month of March 2014</td>
</tr>
<tr>
<td>25 04 2014</td>
<td>Filing of Service tax return for the period 1 October 2013 to 31 March 2014</td>
</tr>
<tr>
<td>30 04 2014</td>
<td>Payment of taxes withheld in March 2014</td>
</tr>
</tbody>
</table>
### MAY 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 05 2014</td>
<td>Payment of excise and service tax liability for the month of April 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 05 2014</td>
<td>E-payment of excise and service tax liability for the month of April 2014</td>
</tr>
<tr>
<td>07 05 2014</td>
<td>Payment of taxes withheld in April 2014</td>
</tr>
<tr>
<td>10 05 2014</td>
<td>Filing of excise return for the month of April 2014</td>
</tr>
<tr>
<td>15 05 2014</td>
<td>Electronically file quarterly (Jan to Mar) withholding tax returns in Form 24Q/26Q/27Q</td>
</tr>
<tr>
<td>30 05 2014</td>
<td>Furnishing annual statement (in Form 49C) for tax year 2013-14 by a NR having Liaison Office in India</td>
</tr>
<tr>
<td>30 05 2014</td>
<td>Due date for issue of quarterly (Jan to Mar) TDS/TCS certificate in respect of withholding for payments (other than salary) in Form16A/27D</td>
</tr>
<tr>
<td>31 05 2014</td>
<td>Issue annual certificate of withholding to employees in respect of salary paid during tax year 2013-14 in Form 16</td>
</tr>
</tbody>
</table>

### JUNE 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 06 2014</td>
<td>Payment of excise and service tax liability for the month of May 2014 other than e-payment</td>
</tr>
<tr>
<td>06 06 2014</td>
<td>E-payment of excise and service tax liability for the month of May 2014</td>
</tr>
<tr>
<td>07 06 2014</td>
<td>Payment of taxes withheld in May 2014</td>
</tr>
<tr>
<td>10 06 2014</td>
<td>Filing of excise return for the month of May 2014</td>
</tr>
<tr>
<td>15 06 2014</td>
<td>Payment of advance tax (not less than 15% of the estimated tax for tax year 2014-15)</td>
</tr>
<tr>
<td>30 06 2014</td>
<td>Final adjustment of amount paid, if any, on a monthly basis under Rule 6(3)(ii) of Cenvat Credit Rules, 2004</td>
</tr>
</tbody>
</table>
### JULY 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 07 2014</td>
<td>Payment of excise and service tax liability for the month of June 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 07 2014</td>
<td>E-payment of excise and service tax liability for the month of June 2014</td>
</tr>
<tr>
<td>07 07 2014</td>
<td>Payment of taxes withheld in June 2014</td>
</tr>
<tr>
<td>10 07 2014</td>
<td>Filing of excise return for the month of June 2014</td>
</tr>
<tr>
<td>15 07 2014</td>
<td>Electronically file quarterly (April to June) withholding tax returns in Form 24Q/26Q/27Q</td>
</tr>
<tr>
<td>30 07 2014</td>
<td>Due date for issue of quarterly (Apr to June) TDS/TCS certificate in respect of withholding for payments other than salary in Form 16A/27D</td>
</tr>
<tr>
<td>31 07 2014</td>
<td>Income tax and wealth tax return for individual and non-corporates (who are not subject to tax audit), for tax year 2013-14</td>
</tr>
</tbody>
</table>

### AUGUST 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 08 2014</td>
<td>Payment of excise and service tax liability for the month of July 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 08 2014</td>
<td>E-payment of excise and service tax liability for the month of July 2014</td>
</tr>
<tr>
<td>07 08 2014</td>
<td>Payment of taxes withheld in July 2014</td>
</tr>
<tr>
<td>10 08 2014</td>
<td>Filing of excise return for the month of July 2014</td>
</tr>
</tbody>
</table>

### SEPTEMBER 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 09 2014</td>
<td>Payment of excise and service tax liability for the month of August 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 09 2014</td>
<td>E-payment of excise and service tax liability for the month of August 2014</td>
</tr>
<tr>
<td>07 09 2014</td>
<td>Payment of taxes withheld in August 2014</td>
</tr>
<tr>
<td>10 09 2014</td>
<td>Filing of excise return for the month of August 2014</td>
</tr>
<tr>
<td>15 09 2014</td>
<td>Payment of advance tax (not less than 45% of the estimated tax for tax year 2014-15)</td>
</tr>
<tr>
<td>30 09 2014</td>
<td>Income tax and wealth tax return for non-corporates (who are subject to tax audit), for tax year 2013-14</td>
</tr>
</tbody>
</table>
<pre><code>                               | Income tax and wealth tax return for corporates (non - transfer pricing (TP) cases), for tax year 2013-14 |
</code></pre>
### OCTOBER 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 10 2014</td>
<td>Payment of excise and service tax liability for the month of September 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 10 2014</td>
<td>E-payment of excise and service tax liability for the month of September 2014</td>
</tr>
<tr>
<td>07 10 2014</td>
<td>Payment of taxes withheld in September 2014</td>
</tr>
<tr>
<td>10 10 2014</td>
<td>Filing of excise return for the month of September 2014</td>
</tr>
<tr>
<td>15 10 2014</td>
<td>Electronically file quarterly (July to Sept) withholding tax returns in Forms 24Q/26Q/27Q</td>
</tr>
<tr>
<td>25 10 2014</td>
<td>Filing of Service tax return for the period 1 April 2014 to 30 September 2014</td>
</tr>
<tr>
<td>30 10 2014</td>
<td>Issue of quarterly (July to Sept) TDS/TCS certificate in respect of withholding on payments other than salary in Form 16A/27D</td>
</tr>
</tbody>
</table>

### NOVEMBER 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 11 2014</td>
<td>Payment of excise and service tax liability for the month of October 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 11 2014</td>
<td>E-payment of excise and service tax liability for the month of October 2014</td>
</tr>
<tr>
<td>07 11 2014</td>
<td>Payment of taxes withheld in October 2014</td>
</tr>
<tr>
<td>10 11 2014</td>
<td>Filing of excise return for the month of October 2014</td>
</tr>
<tr>
<td>30 11 2014</td>
<td>Income tax and wealth tax return and other certifications for corporates subject to TP compliance, for tax year 2013-14</td>
</tr>
</tbody>
</table>

### DECEMBER 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>05 12 2014</td>
<td>Payment of excise and service tax liability for the month of November 2014 (other than e-payment)</td>
</tr>
<tr>
<td>06 12 2014</td>
<td>E-payment of excise and service tax liability for the month of November 2014</td>
</tr>
<tr>
<td>07 12 2014</td>
<td>Payment of taxes withheld in November 2014</td>
</tr>
<tr>
<td>10 12 2014</td>
<td>Filing of excise return for the month of November 2014</td>
</tr>
<tr>
<td>15 12 2014</td>
<td>Payment of advance tax (not less than 75% of the estimated tax for tax year 2014-15)</td>
</tr>
</tbody>
</table>

Footnotes:
The calendar captures only key compliance dates of direct and indirect taxes. It does not include dates for filing of revised returns, due dates for filing of refund applications or replies to notices and appeals or any situation specific dates.
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