Chartered Accountants
& Business Advisers

Doing business in India

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Preface

Established in 1978, PKF Sridhar & Santhanam (PKF Sands) firm of Chartered Accountants, carry the legacy of vast experience and varied exposure in the industry. Since its inception in Chennai, the firm's reach has transcended limits and barriers both functionally and geographically; with branch offices spread across the country and representative units in the middle-east. Our creditable records streamlined with up-to-date practicing tools and expertise, helps us deliver value-added services.

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Introduction

Geography

The Indian subcontinent is separated from mainland Asia by the Himalayas. It is surrounded by the Bay of Bengal in the east, the Arabian Sea in the west, and the Indian Ocean in the south. India's population, as on 1 March 2001 stood at 1.03 billion.

India is one of the oldest civilizations in the world, comprising several cultures, languages, religions, and races. India provides an attractive and investor friendly investment climate.

Advantages of Investing in India

India is a preferred destination for domestic and foreign investments.India has strengths in information technology and other significant areas such as auto components, chemicals, apparels, pharmaceuticals, and jewellery. India has a large pool of skilled managerial and technical expertise, a vibrant democracy, and a huge English-speaking population. Industrial policy reforms have substantially reduced industrial licensing requirements, eased restrictions on expansion and facilitated easy access to foreign technology and Foreign Direct Investment (FDI). Positive economic reforms, since 1991, aimed at deregulating the economy and stimulating foreign investment, have caused India to grow rapidly at an average GDP growth rate of above 8% annually in the past five years.

The key aspects of the Indian economy in this regard are as under:

- 100% FDI is allowed under the automatic route in most of the sectors/ economies
- Free repatriation of profits and capital investments.
- India has Double Taxation Avoidance Agreement (DTAA) with several countries.

Constitution

India, also known as Bharat, is a union of 28 States and 7 Union Territories. It is a Sovereign, Socialist, Secular and Democratic Republic which is governed by the Constitution of India which came into force on 26th January 1950.

The Constitution provides for a Parliamentary form of government which is federal in structure with certain unique features. The constitutional head of the Union is the President. The Parliament consists of the President and two Houses known as the Council of States (Rajya Sabha or the Upper House) and the House of the People (Lok Sabha or the Lower House). The Constitution also provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President. The President shall exercise his/her functions in accordance to the advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

The Council of Ministers is collectively responsible to the House of the People (Lok Sabha). Every State has a Legislative Assembly. Certain States have an Upper House also called State Legislative Council. There is a Governor for each state who is appointed by the President. Governor is the Head of the State and the executive power of the State is vested in him. The Council of Ministers with the Chief Minister as its head advises the Governor in the discharge of the executive functions. The Council of Ministers of a State is collectively responsible to the Legislative Assembly of the State.

The legislative powers between Parliament and State legislatures are distributed as per the lists of entries in the Constitution. The residual powers vest in the Parliament. The centrally administered territories are called Union Territories.

Communication

India has a very well developed communication system, which helps transcend the vast distances of the country. Telephone, internet services, fax, telegraph and postal services of the country are at par with the best in the world. Also, the country has a well developed infrastructure facilities comprising surface, air and water transport systems.

Language and Currency

Hindi (*devnagri* script) is the National language. The Constitution recognises 22 other languages such as Bengali, Gujarati, Kannada, Malayalam, Marathi, Punjabi, Tamil, Telugu, etc as official languages. English is widely spoken in the country and it is a widely prevalent form of communication in almost all sectors of economy.

The currency of India is Rupees.

Legal System

The legal system in India is based on English common law and the judiciary is relatively independent. India's independent judicial system began under the British, and its concepts and procedures resemble those of Anglo-Saxon countries. The Supreme Court is the apex court in the country comprising a Chief Justice and 25 other Justices, all appointed by the President on the advice of the Government of India. At the State level, the judicial administration is headed by the High Court. Each State is divided into judicial districts presided over by a district and sessions judge, who is the highest judicial authority in a district. Below him, there are courts of civil jurisdiction, known in different states as munsifs, sub-judges, civil judges and the like. Similarly, criminal judiciary comprises chief judicial magistrate and judicial magistrates of first and second class.

Major Exports and Imports

The major export products of India include gems and jewelry, leather, medical appliances, equipments, textiles, and IT services. Major imports include petroleum products, cereals, and edible oils.

Government Policy on Foreign Investment in India

India has a good investment platform which actively encourages the entrance of foreign players into the market, either through Foreign Direct Investment (FDI) or through Foreign Institutional Investments (FII).

During 1990s the FDI regime has been liberalised with several restrictions on foreign investment being removed. Presently FDI can be divided into two broad categories – FDI under automatic approval route and FDI with prior approval of Government. (There is also a list of industry into which FDI is prohibited. In 2008, despite the slowdown of the global economy, India attracted over US$25 billion in foreign investment and from March 9 to May 19, 2009, foreign institutional investors (FII) invested nearly US$4.2 billion in the Indian stock markets.

In February 2009, the Government made two significant changes in the foreign investment policy. Firstly, if a foreign investor invests up to 49% in an Indian owned *and* controlled investing company, which in turn makes a downstream investment in a target Indian company, the total foreign investment in the downstream target company will be considered to be nil. Secondly, it was made mandatory to take Government approval for the transfer of ownership and control of Indian companies to non-resident entities in restricted sectors such as telecom, defence production, air transport services and broadcasting.

- Automatic Route: FDI upto 100% is allowed under the automatic route in all activities/sectors except those which specifically require prior approval of the Government. Thus in most cases only intimation needs to be given to the Reserve Bank of India (RBI), within 30 days of making the investment. There are also certain sectors in which FDI is prohibited.

- Government Approval: FDI in the following sectors requires prior approval of the Government:

  - Activities/items that require an industrial licence.

- Proposals in which the foreign collaborator has an existing financial/technical collaboration in India in the same field.

- Proposals for acquisitions of shares in an existing Indian company in financial service sector and where regulations of Securities and Exchange Board of India (SEBI) regarding substantial acquisition of shares and takeovers, are attracted.

- All proposals falling under sectors in which FDI is not permitted.

Approvals of all such proposals are granted on the recommendations of Foreign Investment Promotion Board (FIPB). The finance minister announced the government's commitment to a 90-day period for approving all foreign investments. Government officers assigned to larger foreign investment proposals shall facilitate Central and State clearances in a time-bound manner. Unlisted companies with a good 3 year track record have been permitted to raise funds in international markets through the issue of Global Depository Receipts (GDRs) and American Depository Receipts (ADRs).

FIIs (Foreign Institutional Investments) include Asset Management Companies, Pension Funds, Mutual Funds, and Investment Trusts such as Nominee Companies, Incorporated/Institutional Portfolio Managers or their Power of Attorney holders, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies. They are regulated by SEBI Regulations and FEMA (Foreign Exchange Management Act). FIIs can invest up to the level of FDI permitted under various sectors with the approval of the Board of Directors and the Shareholders of the Investee Company.

- External Commercial Borrowings (ECB): ECBs include bank loans, suppliers' and buyers' credits, fixed and floating rate bonds (without convertibility) and borrowings from private sector windows of Multilateral Financial Institutions such as International Finance Corporation. Euro-issues include Euro-convertible bonds and Global Deposit Receipts (GDRs). ECBs are permitted for financing expansion of existing capacity as well as for fresh investment, to augment the resources available domestically. ECBs can be used for any purpose (domestic expenditure as well as imports) except for investment in stock market and speculation in real estate.

▪ Industrial Policy: Due to liberalization and deregulation of the economy, industrial license is required for specified industries. Industrial licenses are regulated under the Industries (Development and Regulation) Act 1951. At present, industrial license is required only when:

- The industry is retained under compulsory licensing scheme
- Manufacture of items is reserved for small scale sector
- The proposed location attracts restrictions for geographical reasons.

• General Permission of RBI under FEMA(Foreign Exchange Management Act): Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors. The companies are required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investor.

• Repatriation of investment capital and profits earned in India: All foreign investments are freely repatriable, subject to sectoral policies and except for cases where Non Resident Indians choose to invest specifically under non-repatriable schemes. Dividends declared on foreign investments are fully repatriable subject to certain conditions.

• Non-residents can sell shares through stock exchanges without prior approval of RBI and repatriate the sale proceeds through a bank, if they hold the shares on repatriation basis and if they have the necessary no objection certificates. Tax clearance certificate issued by the Income Tax authority will also hold good.

• Profits, dividends, etc. (which are remittances classified as current account transactions) can be freely repatriated.

Import Controls

The import policy of India has basically three objectives:

- to make necessary imported goods more easily available, including essential capital goods for modernizing and upgrading technology.
- to simplify and streamline procedures for import licensing.
- to promote efficient import substitution and self-reliance.

There are goods whose import is restricted in India, but most of the restrictions are on grounds of security, health and environmental protection, or because the goods are reserved for production by small and tiny enterprises, which are home-based or village-based and which require low skills and employ a large number of people. But the policy of restricting import of consumer goods is changing. Imports are allowed free of duty for export production under a duty exemption scheme. There are no quantitative restrictions on imports of capital goods and intermediates. There is an Export Promotion Capital Goods (EPCG) Scheme under which exporters are allowed to import capital goods (including computer systems) at concessionary customs duty, subject to fulfillment of specified export obligations. Service industries enjoy zero import duty under the EPCG Scheme.

Exchange Controls

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

Sources of Finance

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

▪ Banking System: The banking sector comprises commercial banks, cooperative banks and regional rural banks.

▪ Specialised Financial Institution (SFI): SFIs are institutions set up by the government mainly for providing medium and long-term financial assistance to industry and are known as 'Development Financial Institutions'. These institutions receive funds for financing their operations primarily from the government or other public institutions. These institutions also raise funds from the capital market.

▪ Non-Banking Finance Companies (NBFCs): NBFCs help in broadening access to financial services and enhancing competition and diversification of the financial sector. These are mostly private sector entities that provide niche financial services and play an important role in the primary and secondary securities market.

▪ Mutual Funds: Mutual funds play a significant role in capital markets. They act as a vehicle for collective investment by pooling together the small investors. The functioning of mutual funds is under the supervision of SEBI.

▪ Venture Capital funds: Venture Capital is an important source of finance for those small and medium-sized firms, which have very few avenues for raising funds. Venture capital is a commitment of capital, or shareholdings, for the formation and setting up of small scale enterprises at the early stages of their life cycle. SEBI is the nodal agency for registration and regulation of both domestic and overseas venture capital funds.

▪ Capital Markets: Capital market in India is well developed and acts as an important source of finance to public as well as private sector enterprises.

▪ SEBI monitors and protects the interests of investors in securities, and aims at the development and regulation of the securities market.

Regulatory framework

Various regulatory frameworks have been setup for the purpose of regulating business in India. The key features of some of these bodies are given below:

Registrar of Companies (ROC)

Registrar of Companies (ROC) is responsible for registering companies floated in the respective State or Union Territory.

The powers vested with the ROC are:-

- Registration of memorandum and articles, prospectus and reduction of capital.
- Calling for information or explanation.
- Seizure of documents.
- Investigation into affairs of a company.
- Inspection of books of accounts, etc of companies.
- Striking off defunct companies from register.
- Winding up petition by the Registrar.

Securities and Exchange Board of India (SEBI)

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

Some of the functions are:

- Registering and regulating the working of Stock brokers and other intermediaries
- Promoting investor's education
- Prohibiting unfair trade practices relating to securities.

Secretariat for Industrial Assistance (SIA)

SIA has been set up by the Ministry of Commerce and Industry to provide a single window for entrepreneurial assistance and investor facilitation. It processes all applications which require Government approval, conveying Government decisions on applications filed, assisting entrepreneurs and investors in setting up projects (including liaison with other organizations and State Governments) and in monitoring the implementation of projects.

Foreign Investment Promotion Board (FIPB)

FIPB is a department of the Ministry of Finance, set up specifically for expediting the approval process for foreign investment proposals. It is responsible for executing the policy of the Government on Foreign Direct Investments (FDI). Its main functions are:

- Expediting the approval of the foreign investment proposals.
- Reviewing the foreign direct investment polices and coordinating with other agencies to formulate guidelines that are transparent and which encourage FDI into the various sectors of the country.

- Looking after the implementation of the various proposals which have been approved by it.
- Encouraging FDI into the country by establishing contact with international companies and inviting them to invest in India.
- Interacting with government, non- government and industry organizations to increase the inflow of foreign direct investments.
- Coordinating with the Foreign Investment Promotion Council that has been set up in the Industry Ministry.

Foreign Investment Implementation Authority (FIIA)

Government of India has set up the Foreign Investment Implementation Authority (FIIA) to facilitate quick translation of Foreign Direct Investment (FDI) approvals into implementation. It provides a pro-active, one stop service to foreign investors by helping them obtain necessary approvals, sort out operational problems, and meet with various Government agencies to find solution to their problems.

Reserve Bank of India

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

Central Board of Direct Taxes (CBDT)

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

- Implementing measures for assessment and collection of taxes
- Prevention and detection of tax evasion and tax avoidance;
- Recruitment, training and all other matters relating to service of all personnel of the Income-tax Department.

Central Board of Excise and Customs (CBEC)

CBEC formulates policy concerning levy, collection and administration of Customs, Central Excise duties and Service Tax and prevention of smuggling. Its main functions are:

- Levying & collecting revenues in a fair, equitable and efficient manner
- Implementing the Government's economic, tariff and trade policies
- Facilitating trade and industry by streamlining Customs, Excise and Service Tax processes
- Combating revenue evasion, commercial frauds and social menace in an effective manner

Authority for Advance Rulings (AAR)

A scheme of Advance Rulings, to be administered under an Authority for Advance Rulings, was introduced under Income Tax Act 1961, to provide the facility of determining the Income-tax liability of a non-resident, well in advance, and to avoid long drawn and expensive litigation later on.

Under the scheme, a non-resident and other specified categories of residents, can obtain binding rulings from the Authority on question of law or fact arising out of any transaction which are relevant for the determination of their tax liability. However, such Ruling cannot be sought on any question which is pending before the Income Tax authorities, Appellate Tribunal or a Court of Law in India. AAR (Procedure) Rules, 1996 provide detailed procedure for obtaining advance rulings.

Business Structures

Types of Business Structures

The main business structures used in India are:

- Public Limited Company
- Private Limited Company
- Partnership
- Joint Venture
- Sole Proprietorship
- Trusts
- Foreign branches
- Limited Liability Partnership (LLP)

Companies

Indian companies can be divided into two basic categories: private limited company and public limited company. A private limited company is one which

- Restricts its members' right to transfer of shares
- Limits the number of its members to fifty, and
- Prohibits invitation to public to subscribe for its shares and debentures.

A public limited company is any company which is not a private limited company. Public limited companies whose shares are traded in the stock exchange are called listed companies.

Governing Documents

The Companies Act 1956 contains all the rules and regulations for the incorporation as well as functioning of the company. The basic governing document for the company registered in India is the Certificate of Incorporation, and Memorandum and Article of Association, which should be printed and always be available at the Registered office of the company as per the provisions of the governing Act. The company issues share certificates (for trading purpose, shares have to be in dematerialized format) to its shareholders and maintains a register of all shareholdings. The Companies Act prescribes certain other documents to be maintained by the company.

Directors

The ultimate management of a Company lies in the hands of its Shareholders, however, it is the Board of Directors which manages the day to day affairs of the Company. The authority of the Board is decided as per the Articles and the Memorandum of Association of the Company and the regulations of the Indian Companies Act, 1956.

Forming a company

Formation of a Company in India is governed by the Indian Companies Act, 1956. The procedure for formation of a company is as under:

- A suitable name is to be decided for the proposed company
- Drawing up Memorandum of Association which will, among others, state:
  - Name of the Company
  - Main objects of the Company
  - Share Capital of the Company
  - Statement of liability of the members
  - State where registered office of the Company will be situated
- Payment of the prescribed registration fees and stamp duty

On fulfillment of the above requirements, a Certificate of Incorporation is issued evidencing incorporation of the company.

Registration requirements and filing procedures for public securities

Companies whose shares are offered to the public may list their shares in recognized stock exchanges in India. Companies desirous of listing their shares are required to comply with the listing agreement of the concerned stock exchange and the guidelines stipulated by SEBI in this context.

Corporate Governance

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

- Responsibility of directors who approve the strategic direction of the organization within a framework of prudent controls and who employ, monitor and reward management.

- Accountability of the Board to shareholders who have the right to receive information on the financial performance of their investment and exercise power to reward or remove the directors entrusted to run the company.

- Transparency of information with which meaningful analysis of a company and its actions can be made. The disclosure of financial and operational information and internal processes of management oversight and control enable outsiders to understand the organization.

- Fairness that all shareholders are treated equally and have the opportunity to redress violation of their rights.

Audit requirements and practices

- Statutory Audit: Indian companies are required to get their accounts audited by the statutory auditor of the company appointed by the shareholders.

- Tax Audit: Tax Audit is to be conducted under the provisions of the IT Act where the total sales, turnover or gross receipts of the business exceeds Rs.4 million in the concerned financial year of the company. A tax audit report is to be submitted to the tax authorities along with the Return of Income of the company.

- Cost Audit: Central Government may order cost audit for the companies engaged in production, processing, manufacture and mining activities. Companies so notified are required to maintain cost accounting records as specified under the Cost Audit Record Rules notified in this behalf. The cost accounts and records of such companies are required to be compulsorily audited by a cost accountant.

- Internal audit: Companies having a paid up equity capital exceeding Rs.5 million at the beginning of the concerned financial year or having an annual turnover exceeding Rs.50 million for last three consecutive financial years, need to have an internal audit system in place.

Shareholdings by non-residents

New guidelines have been issued by the Indian Government, for calculation of total foreign Investment i.e. direct and indirect foreign investment in an Indian company.

In case of direct foreign investment, all the investment made directly by a non-resident entity into the Indian company would be considered as foreign investment.

In case of indirect foreign investment, if the investment is made by a non resident entity through the investing Indian company which is 'owned and

controlled' by resident Indian citizens and/or Indian companies, that would not be considered as indirect foreign investment.

If the above condition is not satisfied or if the investing company is owned or controlled by 'non resident entities', the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment.

The total foreign investment would be the sum total of direct and indirect foreign investment. The above methodology of calculation would apply at every stage of investment in Indian Companies and thus to each and every Indian Company.

Foreign Companies

A foreign company planning to set up business operations in India may function either as an Indian company or as a foreign company. Incorporation as a Company would have the following additional basic operating abilities compared to a Project Office or a Branch Office set up:

- Borrowing and granting of loans on its own account
- Making investments on its own account
- Entering into contracts in its own name
- Limited liability
- Acquisition and disposal of immovable property.

A foreign company is a company incorporated outside India and conducts its business in India. Foreign companies can set up their operations in India through

- Liaison/Representative Office

• Project Office

• Branches

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

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

▪ Branch Office: Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes:

- Export/Import of goods

- Rendering professional or consultancy services

- Carrying out research work, in the business in which the parent company is engaged.

- Promoting technical or financial collaborations between Indian companies and parent or other group companies.

- Representing the parent company in India and acting as its buying/selling agent in India.

- Rendering services in the field of Information Technology and development of software.

- Rendering technical support to the products supplied by the parent/ group companies.

- Foreign airline/shipping Company.

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

▪ Branch office on a Stand Alone Basis : 'Stand alone basis' means such branch offices would be isolated and restricted to the Special Economic Zone alone, and no business activity/transaction will be allowed outside the Special Economic Zones in India which includes branches/subsidiaries of its parent office in India. No specific approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to specified conditions.

A Foreign company can commence operations in India by incorporating as a company under the Companies Act, 1956 through

- Joint Ventures; or

- Wholly Owned Subsidiaries

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

Partnerships

Partnership is yet another structure, which can be used for making investments in India. Partnership is created by an agreement entered between two or more parties (individuals/ companies) to share the profits of a joint business. Such an agreement is called the 'Deed of Partnership'. Partnership law in India is governed by the Indian Partnership Act 1932. Foreign entities and foreign individual investors can form partnerships in India. Registration of partnership is advisable as it confers certain legal rights upon the partnerships and its partners.

Joint Ventures

Foreign Companies can set up their operations in India by forging strategic alliances with Indian partners.

Joint Venture may entail the following advantages for a foreign investor:

- Established distribution/ marketing set up of the Indian partner.
- Available financial resource of the Indian partners.
- Established contacts of the Indian partners which help to smoothen the process of setting up of operations.

Trusts

A Trust is an arrangement by which property is handed over to or vested in a person to use and dispose it off for the benefit of another person. It can be Public Trust or Private Trust. Public Trust is the trust which is created for the public for charitable or religious purposes or both. Private Trust is created for the private property. For the creation of the Trust it is necessary to execute a Trust Deed.

Sole Proprietorship

Sole proprietorship is a business organization in the name of particular individual itself. This has a disadvantage as it does not get the recognition in the market, from point of view of funding and investment. Also, markets show less faith in it because there is no regulatory body that regulates its functioning like in the case of Companies.

Limited Liability Partnership (LLP)

The salient features of the LLP Act 2008 are as follows:

(i) The LLP is a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit can subscribe their names to an incorporation document and file the same with the Registrar to form a Limited Liability Partnership. The LLP has perpetual succession;

(ii) The mutual rights and duties of partners of an LLP are governed by the provisions of the LLP Act 2008. The act provides flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties are governed by the provisions of the LLP Act;

(iii) The LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature. No partner is liable on account of the independent or un-authorized actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose are unlimited for all or any of the debts or other liabilities of the LLP;

(iv) The LLP should have at least two partners and should also have at least two individuals as Designated Partners, of whom at least one should be resident in India. The duties and obligations of Designated Partners shall be as provided in the law;

(v) The LLP is under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency are to be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government of India

(vi) The Central Government has powers to investigate the affairs of an LLP, if required, by appointment of competent Inspector for the purpose;

(vii) A firm, private company or an unlisted public company is allowed to be converted into LLP in accordance with the provisions of the Act.

Taxation

Introduction

India has two types of taxes, Direct taxes and Indirect taxes. Direct taxes include income tax, wealth tax, corporate tax etc. Indirect taxes include service tax, excise duty, custom duty, securities transaction tax etc.

Indian Income Tax Laws and Administration

The Central Board of Direct Taxes (CBDT) has powers relating to various direct taxes in India. CBDT provides essential inputs for policy and planning of direct taxes in India. At the same time, it is also responsible for administration of direct tax laws through the Income Tax Department.

In order to provide the facility of ascertaining the Income-tax liability of a non-resident, to plan their Income-tax affairs well in advance, and to avoid long drawn and expensive litigation, a scheme of Advance Rulings has been introduced under the Income-tax Act, 1961 to be administered under an Authority for Advance Rulings. A non-resident and specified categories of residents can obtain binding rulings from this Authority on question of law or fact arising out of any transaction/proposed transactions which are relevant for the determination of his tax liability. AAR (Procedure) Rules, 1996 provide detailed procedure for obtaining advance rulings.

Fiscal Year

Income tax is an annual tax imposed separately for each 'Assessment Year'. Income of the Previous Year (Financial Year immediately preceding the Assessment year) is assessed for income tax during the Assessment Year. Financial Year starts from 1st April and ends on 31st March of the next year.

Taxpayers

Assessee means a person who is liable to pay any tax, or any other sum of money, payable under the Income Tax Act 1961. A person includes:

- Individual
- Hindu Undivided Family (HUF)
- Association of Persons (AOP)
- Body of Individuals (BOI)
- Company
- A local authority and,
- Every artificial juridical person not falling within any of the preceding categories.

Taxable Income

In case of foreign expatriate working in India, the remuneration received by him, assessable under the head 'Salaries', is deemed to be earned in India if it is payable to him for service rendered in India. Thus, irrespective of the residential status of the expatriate employee and the place where the salary is received, the amount received by him as salary for services rendered in India shall be liable to tax in India being income accruing or arising in India. However, there are certain exceptions to the rule which are briefly discussed below:-

▪ Remuneration of an employee of a foreign enterprise is exempt from tax if his stay in India is less than 90 days in aggregate during the financial year. This is subject to further relaxation under the provisions of Double Taxation Avoidance Agreement entered into by India with the respective country.

▪ Remuneration received by a foreign expatriate as an official of an embassy or high commission or consulate or trade representative of a foreign state is exempt on reciprocal basis.

▪ Remuneration from employment on a foreign trip is exempt from tax provided the stay of the employee in the foreign country does not exceed 90 days in the financial year.

Payment of Tax

▪ Advance Tax: In India the assessees are required to pay advance tax on their estimated tax liability for the relevant financial year. Under the scheme of advance payment of tax, every income is liable for payment of advance tax.

Due dates	**Estimated Advance Tax payable as % of total tax (cumulative)**	
	Corporate	**Non-corporate**
On or before 15th Jun	15%	-
On or before 15th Sep	45%	30%
On or before 15th Dec	75%	60%
On or before 15th Mar	100%	100%

▪ Self Assessment Tax: Before submitting the return of income the assessee is required to find whether any tax or interest is payable and required to deposit the self assessment tax determined to the revenue authorities. Advance tax paid and tax deducted at source can be adjusted at the time of payment of Self assessment tax.

▪ Deduction of Tax at Source: Tax deduction at source means the tax, which is required to be paid by the assessee, is deducted by the person paying the income to him. Thus, the tax is deducted at the source of income itself. The tax so deducted at source by the payer is to be deposited in the income tax department account. The tax so deducted from the income of the recipient is deemed to be payment of income tax by the recipient at the time of his assessment.

▪ Tax Collected at Source: A seller shall, at the time of receipt of the sale amount from the buyer, collect tax from the buyer at the rate specified in the Income Tax Act.

Filing of returns

Under the Income Tax Act, taxpayers are required to file their Return of income annually for every assessment year. Return of income has to be filed even if there is a loss, or nil income. Dates within which return of income is to be filed:

Category of Tax payers	Due date
Companies and other Tax Payers who are required to get audited their accounts under Income Tax Act	By September 30th following the end of the financial year.
Other tax payers (Individuals, partners etc.)	By July 31 following the end of the financial year.

Residence and source

The Income tax liability is determined on the basis of residential status of the tax payers. For this purpose, tax payers are divided into the following categories:

• Resident in India
- Resident but not ordinarily resident
- Resident and ordinarily resident

• Non- Residents in India.

▪ Resident in India : An individual is treated as resident in a year if he in India:

• For 182 days or more during the previous financial year or

• For 60 days or more during the previous financial year and 365 days or more during the preceding four years.

Individuals fulfilling neither of these conditions are non residents.

- Resident and ordinarily Resident : A Resident individual is treated as Resident and ordinarily Resident if he satisfies both the following conditions:

• He has been resident in India for 730 days or more during the 7 year immediately preceding the relevant previous year; And

• He has been in India for at least 9 out of 10 years immediately preceding the relevant previous year.

- Resident but not ordinarily Resident : A Resident individual who satisfies only one of the above 2 conditions is treated as a resident but not ordinarily Resident.

- Resident Status of Companies: An Indian company is always treated as resident in India. A foreign company is treated as resident in India only if the control and management of the affairs of the company is situated wholly in India.

- Resident status of other entities: Other entities like Association of Persons or Partnership firms are considered as resident in India if the control and the management of their affairs are wholly situated in India.

Source of Income

Income of the tax payer is assessed under the following categories called 'Heads of Income':

- Salaries
- Income from House Property
- Profits and gains of business or profession
- Capital gains
- Income from other sources

The Income Tax Act contains separate statutory provisions dealing with the computation and taxation of each category of above income. In respect of business income, specified deductions and legitimate expenditure incurred for business purposes is deductible in computing the taxable income. The aggregate of income computed under each of the above five heads of income is known as Gross Total Income.

Taxable income under the Income Tax Act is income:

- Which is received or deemed to be received in India
- Which accrues or arises or is deemed to accrue or arise in India
- Which accrues or arises outside India

Taxation of Partnerships, Trusts

Registration as a Partnership allows certain tax incentives available to a partnership firm. For instance, income of a Partnership Firm is taxed at the rate of 30.9% for Financial Year 2009-10 as against the tax rate of 42.23% applicable to Foreign Companies operating in India. Further, once the profits of the business are taxed in the hands of the partnership, then the partners are not taxed on the share of profits received from the partnership firm.

Taxation of Companies

Indian companies are taxable on their worldwide income, irrespective of its source and origin. Foreign companies are taxed only on income which arises from operations carried out in India or, in certain cases, on income which is deemed to have arisen in India. The tax liability on income of a company depends upon the resident status of the company.

The total income of the company is determined by aggregating the income of the company under the different heads of income. Taxable income is determined by allowing the permissible deductions under the Income Tax Act.

Tax rates for companies: The tax rates are fixed by the annual Finance Act (Budget). The current tax rates applicable for financial year 2009-2010 are as under:

Company	Where taxable income exceeds INR 10 Million	Other cases
Domestic Company	33.99% (30% plus surcharge of 10% plus education cess of 3%)	30.9% (30% plus education cess of 3%)
Foreign Company	42.23% (40% plus surcharge of 2.5% and education cess of 3%)	41.2% (40% plus and education cess of 3%)

Minimum Alternative Tax (MAT): MAT is introduced with a view to ensure that companies with business profits do not regularly avoid paying tax. Where income-tax payable by corporate taxpayers is less than 10% of their 'Book profits', then 15% (plus surcharge, plus education cess, as given above) of the Book profits is regarded as their minimum tax liability. Thus, the effective rate of minimum tax for the Financial Year 2009-10 would be as below:

Company	Where taxable income exceeds INR 10 Million	Other Cases
Domestic Company	16.995%	15.45%
Foreign Company	15.836%	15.45%

Interest Deductions

Deduction of interest on borrowings, for purchase or construction of house property, is allowed from the Income from House Property under the Income Tax Act 1961. The limit of deduction is upto Rs. 30,000 or Rs. 1,50,000 depending upon the conditions as mentioned in the Income Tax Act .

▪ Profits, dividends, etc. (which are remittances classified as current account transactions) can be freely repatriated.

▪ Transfer Pricing Legislation:

Transfer Pricing is the process of adjusting the prices of cross-border transactions between related / associated parties. Detailed transfer pricing legislation was introduced in the Finance Act, 2001, in order to facilitate the computation of reasonable, fair and equitable profits and taxes in the case of businesses carried on by multinational companies. The transfer pricing provisions generally follow the OECD guidelines, however, there are certain fundamental differences in that the Indian provisions require the computation of an "Arm's length price" as against the internationally accepted norm of "Arm's length range". Further the Arm's length price is to be computed as the arithmetic mean of comparable results. A variance of around 5% of the mean may be opted for (With effect from 1st Oct 2009, variance of 5% of price at which international transaction would be actually undertaken by the company, will be allowed. It is applicable to those cases also whose assessments are pending on 1st Oct 2009). Section 92 of the IT Act provides that the price of any transaction between associated enterprises, where either or both of whom are non resident for tax purposes ('International transaction'), shall be computed having regard to the Arm's length principle. Two enterprises are considered to be associated if there is direct/indirect participation in the management, or control, or capital, of an enterprise by another enterprise or by same persons in both the enterprises. In determining whether there is participation in management or control, various factors are taken into consideration including:

- Direct / indirect shareholding having 26% or more of voting power,
- Advancing of loans of 51% or more of total assets,
- Appointment of more than 50% of the board of directors,
- Goods manufactured are sold under influenced prices.
- Dependence on IPRs owned by either party.

The burden of proving that the international transactions are in accordance with the Arm's length principle lies with the taxpayer. For this purpose, the IT Act requires the maintenance of prescribed information and documents relating to international transactions undertaken between associated enterprises. Failure to do so attracts very stiff penalties. Also, it is mandatory to obtain an accountant's certificate in a prescribed format

in respect of all international transactions between associated enterprises. Such report would have to contain prescribed particulars of the transaction, and would have to be filed with the tax authorities by September 30th (in case of companies) of the following year in which the transactions are entered. Once the accountant's certificate has been filed the concerned tax officer may call for the prescribed documentation in the assessment proceedings. Based on available information, the tax officer may adjust or re-compute the prices used in international transactions. Such an adjustment would attract tax and interest on the additional amount. Potentially, a penalty of 100% to 300% of the tax on the adjusted amount could also be levied.

Taxation of Capital Gains

Short-term capital gain applies if the asset is sold for gain within 36 months from the date of purchase (12 months for shares, listed securities, units of mutual funds and zero coupon bonds), else it is termed a Long-term capital gain. Indexation of cost of acquisition and improvement of a long-term capital asset of any nature (other than debentures) is available to Residents.

However, the benefit of indexation is available to Non-residents only on long-term capital asset other than shares/ debentures of an Indian Company acquired in foreign currency. Capital Gain tax rates (exclusive of surcharge and education cess) are tabled below:

Description	**Rates**
Short Term capital assets (Other than (2) below)	Normal corporate/ individual tax rates
Short term capital assets-being shares and units of equity oriented fund which	15%

have been charged to Securities Transaction Tax (STT)	
Long term capital assets-being listed shares in a company or unit of an equity oriented fund, which have been charged to STT	Exempt
Other long term capital asset	20%

Interaction with International Tax Regime

India has entered into Double Taxation Avoidance Agreements (DTAA) with several countries including U.S.A., U.K., Japan, France and Germany. In case of transactions where DTAA is applicable, the assessee is given relief by giving credit or refund for the tax paid in the other country. Relief may be in the form of credit for tax payable in another country or by charging tax at lower rate.

The DTAA provisions shall prevail over the Income Tax Act provisions.

Taxation of Individuals

Every person, who is an assessee and whose total income exceeds the maximum exemption limit, shall be chargeable to income tax at the rates prescribed in the Finance Act. Such income tax shall be paid on the total income of the previous year in the relevant assessment year.

Tax Incidence for individuals

Status	**Indian Income**	**Foreign Income**
Resident and ordinarily resident	Taxable	Taxable
Resident but not ordinary resident	Taxable	Not taxable
Non-Resident	Taxable	Not taxable

Computation of Taxable income of an individual

Taxable income is determined after subtracting the permissible deductions under the IT Act, from the Gross Total Income. The income that is obtained after such deductions is called as the Net Income or the Taxable Income.

Tax rate for individuals for Financial Year 2009-10 :

Taxable Income (In Rs)	**Rate of Tax**
Up to 160000	Nil
160,001 to 300,000	10%
300,000 to 500,000	20%
Above 500,000	30%

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- Senior citizens (above 65 years) with income up to Rs.2.40 lakhs are exempt from Income tax.
- Resident women assessees (below 65 years of age) with income upto Rs.1.90 lakhs are exempt from income tax..
- Education Cess of 2% is to be levied on the aggregate of income tax plus surcharge where applicable.
- An additional secondary & higher education cess of 1% is levied on the amount of income tax and surcharge in addition to the education cess.

Other Taxes

Pay Roll Tax

There are no Payroll Taxes applicable in India presently.

Services Tax

Service tax is a tax levied on specified services rendered by a person. The responsibility of payment of the tax is thus on the service provider. It is an indirect tax as it can be recovered from the service receiver by the service provider in the course of his business transactions.

The Central Board of Excise and Customs (CBEC) deals with the formulation of policies concerning levy and collection of Service Tax. The rules for Registration under Service Tax are as follows:

- A person liable to pay service tax should file an application for registration within thirty days from the date on which the services rendered become liable to service tax or within thirty days from the commencement of business whichever is earlier.
- Every service provider is required to obtain registration by filing the Form ST-1 in duplicate with the Central Excise Office.
- A ‘registered' service provider is referred to as an ‘assessee'.
- A single registration is sufficient even when an assessee is providing more than one taxable services. However, he has to mention all the services being provided by him in the application for registration and the field office shall make suitable entries/endorsements in the registration certificate.
- A fresh registration is required to be obtained in case of transfer of business to another person.
- Any registered assessee when he ceases to provide the taxable service shall surrender the registration certificate immediately.
- In case a registered assessee starts providing any new service from the same premises, he need not apply for a fresh registration. He can simply fill in the Form ST-1 for necessary amendments he desires to make in his existing information. The new form may be submitted to the jurisdictional Superintendent for necessary endorsement of the new service category in his Registration certificate.

In case of Individuals, proprietary concerns and partnership firms, service tax is to be paid on a quarterly basis. The due date for payment of service tax is the 5th of the month (6th day of the month if taxes are deposited through internet banking), immediately following the respective quarter. (The quarters being April to June, July to September, October to December and January to March). However, payment for the last quarter i.e. January to March is required to be made by 31st of March itself. In case of companies, service tax is to be paid on a monthly basis, by the 5th of the following month (6th day of the month if taxes are deposited through internet banking). However, payment for the month of March is required to be made by 31st of March itself. Service tax is to be paid on the amount realized / received by the assessee during the relevant period, a month or a quarter as applicable.

Service tax is payable at the rate of 10% (plus surcharge, and education cess) of the 'gross amount' charged by the service provider for providing such taxable service, if the gross amount is above the specified threshold

Goods and Services Tax

In the 2006-07 budget, the Empowered Committee of State Finance Ministers was entrusted with the task of preparing a roadmap for the introduction of national level goods and services tax with effect from 01 April 2010. CST (Central sales tax) has been reduced to 2% w.e.f. 1st June, 2008 and will be gradually phased out in order to allow movement of goods freely from one state to another state.

Value Added Tax (VAT)

Value Added Tax is a multi point sales tax with a provision to set off the tax paid on purchases. It is basically a tax on the value addition on the product. The burden of tax is ultimately borne by the consumer of goods. It can also be called as a multi point sales tax levied as a proportion of Valued Added. Each State has its own VAT laws. VAT has replaced existing local sales tax laws in almost all the states of India. Under VAT, the rates are uniform in all the VAT States at 0%, 1%, 4% 12.5% and 20%. However, Liquor, Petrol or Diesel are taxable at the rate of minimum 20% and may vary from State to State, while Gold and Bullion are taxable at the rate of 1%.

Customs Duty

Customs Duty is an indirect tax which is levied on goods imported into India as well as on specified goods exported from India, including the territorial waters of India which extend up to 12 nautical miles into the sea from the coast. The levy and collection of customs duty falls under the purview of the Customs Act, 1962, and is implemented by the CBEC, which is under the Ministry of Finance.

The various Custom duties in India are:

• Basic Duty: This is the general duty levied under the Customs Act, 1962
• Additional Duty (Countervailing Duty): This duty is levied under the Custom Tariff Act, section 3 (1).
• Anti-dumping Duty: This duty prevents the dumping of foreign goods by the transnational companies
• Protective Duty: This duty protects the interest of the Indian industrial sector.

Excise Duty

Central Excise duty is an indirect tax levied on those goods which are manufactured in India and are meant for home consumption. The taxable event is 'manufacture' of 'excisable goods' and the liability of central excise duty arise as soon as the goods are removed (whether sold or not) from the place of manufacture. It is an indirect tax in the sense that the incidence of tax is passed on to the consumer.

The term "excisable goods" means the goods which are specified in the First and Second Schedule to the Central Excise Tariff Act, 1985, as being subject to Excise Duty and include salt.
Generally, the Central excise duty in respect of different goods is on ad-valorem basis i.e. the duty is fixed as a percentage of assessable value of a good.

Sales Tax

Sales tax (now VAT) is levied on the sale of goods, transfer of right to use goods (lease transactions), as well as the transfer of materials in execution of works contracts and hire purchase. The term goods includes movable property and even intangible property such as copyright, trademark, patents etc. The sales tax is levied on inter state as well as intra state sales. The interstate sales tax levied by the Central Government is known as Central Sales Tax (CST) and intra state sales tax levied by respective State Governments is known as Local Sales Tax (LST/VAT). VAT has replaced existing local sales tax laws in almost all the states of India. CST has been reduced to 2% w.e.f 1st June,2008 and will be gradually phased out in order to allow movement of goods freely from one state to another state.

Gift, Estate and Death Duties

There are no Gift, Estate and Death duties in India.

Stamp duties

Stamp duty is a tax, collected by the State Government on legal documents, admissible in Court. The document would be considered as a valid document to produce before the Court as an evidence, if it is on the stamp paper. The court cannot admit instruments or documents which are not properly stamped as evidence. When the property is purchased, the purchaser has to pay stamp duty as per the rules of the Stamp duty act.

Property tax

Property tax is levied on the property and is a matter of State taxes. Every State has its own property tax rates. The owner of the property pays property tax. The taxing unit is a local government body with elected officers. Property tax rates are determined based on the value of the property. Although there are many other forms of taxes in India like Income Tax, VAT etc, yet the property tax is the single largest source of revenue for government.

Securities Transaction Tax

Securities Transaction Tax ('STT') is applicable to the purchase or sale of equity shares, derivatives, units of equity oriented funds through a recognized stock exchange or the sale of a unit of an equity oriented funds to the mutual funds. The tax rates are as follows:

Particulars	Rates
Payable equally by the purchaser and seller on the transaction value on delivery based transactions.	0.125%
Payable by the seller on non-delivery based transactions in equities or units of an equity oriented fund.	0.025%
Payable by seller on derivatives trading (futures and options).	0.017%
Payable by the seller in the case of sale of units of an equity oriented fund to the mutual fund Payable by purchaser on sale of an option insecurities where option is exercised	0.250% 0.125%

The transaction value is determined as follows:

Options – aggregate of strike price and option premium
Futures – traded price
Other securities – purchase / sale price
STT is to be collected by the Recognized Stock Exchange and paid to the Government.

Wealth Tax

Wealth tax is levied on the "net wealth" held by the tax payers on the last date of the relevant financial year, known as 'Valuation date'. Wealth tax is levied @ 1% p.a. on the net wealth exceeding Rs.15 lakh for every individual, HUF, Company and Association of Persons.

Grant and Incentives

General Introduction

Special Economic Zones (SEZs) offer incentives and facilities to business units in order to attract investments, including foreign investments. Some of the incentives offered to SEZ units (the list keeps changing):

• Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
• 100% Income Tax exemption on export income for first 5 years, 50% for next 5 years, and 50% on the re-invested export profit for next 5 years.
• Exemption from Minimum Alternate Tax.
• External Commercial Borrowings upto US $ 500 million in a year without any maturity restriction through recognized banking channels.
• Exemption from Central Sales Tax.
• Exemption from Service Tax.
• Single window clearance for Central and State level approvals.
• Exemption from State sales tax and other levies as extended by the respective State Governments.

Some of the major incentives and facilities offered to SEZ developers in the past include (the list keeps changing):

• Exemption from customs/excise duties for development of SEZs for authorized operations.
• Income Tax exemption on export income for a block of 10 years in 15 years.
• Exemption from Minimum Alternate Tax.
• Exemption from Dividend Distribution Tax.
• Exemption from Central Sales Tax (CST).
• Exemption from Service Tax.

Government Incentives

The Government offers many incentives to investors in India with a view to stimulating industrial growth and development. The incentives offered are normally in line with the government's economic philosophy, and are revised regularly to accommodate new areas of emphasis. The following are some of the important incentives which have been offered, (the list keeps changing):

- Five year tax holiday for:

- Power projects.
- Undertakings engaged in exports.
- New industries in notified states and for new industrial units established, in electronic hardware/software parks.
- Export Oriented Units and units in Free Trade Zones.
- Organizations engaged in providing infrastructure facilities.

- Deduction of 100 per cent of profits for five years in case of Hotel, Industry located in specified areas.

Research and Development (R&D)

Many tax incentives are also available to industries for manufacturing products based on indigenous Research & Development (R&D), which in turn act as incentive for scientific and academic institutions for developing marketable technologies. For example, tax deduction of 125% given for expenses on sponsoring research programmes at national laboratories functioning under approved institutions like ICAR, CSIR, ICMR, DRDO, Department of Biotechnology, Department of Atomic Energy, Department of Electronics, IITs etc. Similarly, bulk drugs produced based on indigenous R&D, are exempt from drug price control for a period of five years from the date of commencement of commercial production. Depreciation allowance at a higher rate is available in respect of plant and machinery installed for manufacturing goods based on indigenous technology developed in recognized in-house R&D units.

Export Market Development Grants

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

Export Finance and Insurance

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

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

- Credit risk insurance covers to the exporters against loss in export of goods and services. It provides insurance against the payment risks due to the far-reaching political and economic changes or due to outbreak of war or civil war.
- Guarantees to the banks and financial institutions in order to enable the exporters to obtain better facilities from them.
- Overseas Investment Insurance to the Indian companies investing in joint ventures abroad as equity or loan.

State Government Incentives

The State Governments have undertaken several policy measures and incentives so as to provide good governance that ensures transparency, reduction in transaction costs, efficiency and citizen centric delivery of public services. These policies seek to create much-needed investment friendly environment and to highlight the major FDI sectors in the State. For instance, the Industrial Policy has been formulated with a view to accelerate industrialization process of the States. Similarly, Information Technology (IT) policy has been framed to bring private investments into the IT sector and develop a roadmap for e-governance. Such developmental policies also aim to adopt strategies for enabling the residents of States to take full advantage of the employment opportunities. Accordingly, several opportunities and incentives are offered to investors, from time to time, so as to motivate them to invest therein.

Protection of Intellectual and Industrial Property

Copyright

India's copyright law, laid down in the Indian Copyright Act 1957 as amended by Copyright (Amendment) Act 1999, fully reflects the Berne Convention on Copyrights, to which India is a party. Additionally, India is party to the Geneva Convention for the Protection of Rights of Producers of phonograms and to the Universal Copyright Convention.

The copyright law has been amended periodically to keep pace with changing requirements. Several measures have been adopted to strengthen and streamline the enforcement of copyrights. These include the setting up of a Copyright Enforcement Advisory Council, training programmes for enforcement officers, and setting up special policy cells to deal with cases relating to infringement of copyrights.

Trade Marks

India provides trademark protection for marks of goods and services, collective marks, certification trademarks and well-known marks under the Trademarks Act 1999. Application for registration of a trademark should be filed with the trademark registry. Trademark is registered after publication in the trademarks journal to invite opposition and further examination. Registration, though not a statutory obligation, is mandatory for taking action against infringement. Registration is valid for an initial period of ten years renewable for a further ten years. Pirated and counterfeit products are liable to seizure even without warrant.

Penalties ranging from six months to three years and fines have been prescribed in the Act for trademarks violations.

Trade Names

A new business must ensure that the trade name does not resemble the name of any other company already registered and also does not violate the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950.

Patents

India has made continuous amendments to the Patents Act 1970, to make the Patents Act fully compliant with India's obligations under the TRIPS Agreement of the WTO.

Immigration

Migration to India

The entry in India, stay and departure is regulated by the Acts passed by the Indian Parliament and rules framed by the Central Government from time to time.

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

Permanent Residence

Who is Eligible?

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

1. a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

2. a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

3. a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

4. minor children of persons who are citizens of India;

5. a person of full age and capacity whose parents are registered as citizens of India by ordinary residence in India for seven years;

6. a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

7. a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

Labour Laws

In India there are a number of labour laws addressing various issues such as resolution of industrial disputes, working conditions, labour compensation, insurance, child labour, equal remuneration etc. Both Central and State governments have enacted laws on labour issues. The major labour related legislations are highlighted below:

- Factories Act 1948
- Workmen's Compensation Act 1923
- Minimum Wages Act 1948
- Payment of Wages Act 1936
- Industrial Disputes Act 1947
- Employee Provident Fund & Miscellaneous Provisions Act 1952
- Payment of Bonus Act 1965 & Payment of Gratuity Act 1972
- Employees State Insurance Act 1948
- Maternity Benefit Act 1961
- Industrial Employment (Standing orders) Act 1946

The Employer Nomination Scheme

There is no Employer Nomination Scheme in India presently.

The Business Skills Migration Program

There is no Business skill migration program in India.

Temporary Residence

Business Visa for a period of one year or more can be obtained by submitting a letter from the sponsoring organization indicating nature of applicant's business, probable duration of stay, validity of visa, places and organizations to be visited and also a guarantee to meet maintenance expenses etc. Visas can be applied for in person or by post at the High Commission of India based in the country from where the candidate intends to depart.

Visitors

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

Upon entering India, there are registration requirement for Foreign Nationals, as described below:

- All foreigners including foreigners of Indian origin visiting India on long term (more than 180 days), holders of Student visa (S), Research Visa (R), Employment Visa (E) etc, are required to get themselves registered with concerned Registration Officer within 14 days of first arrival, irrespective of the duration of their stay.

- Foreigners visiting India on other categories of long term visa including business/Entry(X) visa would not require registration with the concerned Officer if duration of stay does not exceed 180 days on a single visit. In case a foreigner intends to stay for more than 180 days on a single visit he should get himself registered well before the expiry of 180 days.

- Children below 16 years age do not require registration on any type of visa.

Business Development - Provisional

A foreigner can obtain from an Indian Embassy abroad, a multiple-entry visa, which is valid for 5 years but with a cumulative stay in India of not more than 180 days, provided he wishes to come for some business. Foreigners of Indian origin can obtain a 5-year multiple-entry visa for business, to meet their relatives etc.

Business Development - Permanent

An Indian business visa can be granted for up to five years. Business visas provide an ideal solution for those who wish to visit India in order to engage in a variety of business related activities. Unlike Indian employment visas, no job offer from an Indian company is required to secure entry clearance and no skills assessment is necessary. However, business visas do not permit candidates to undertake any form of employment.

Business Visitor Visas

Indian business visas, like business visit visas in many other countries, are designed to allow foreign nationals a temporarily immigration route to India for a short period in order to perform business related activities. Business visas allow their holders to attend conferences, engage in negotiations and undertake fact finding missions with regard to potential buyers and suppliers.

APEC Business Travel Card

It is not applicable for India.

Electronic Travel Authority (ETA)

It is not applicable for India.

Work Permits

Work permit or Employment visa is required if a foreigner desires to take up employment in India. Work permit or Employment visa are issued by Indian Missions abroad and can be issued either to skilled professionals or to people immigrating to India to fill a specific position for a named company. Initially visa or permit is granted for a period of one year and it can be extended in India up to the period of contract. Usually, the employer who offers an employment opportunity initiates the visa application process in India. Alternatively, the applicant may apply to the Indian Embassy / High Commission in his country of residence.