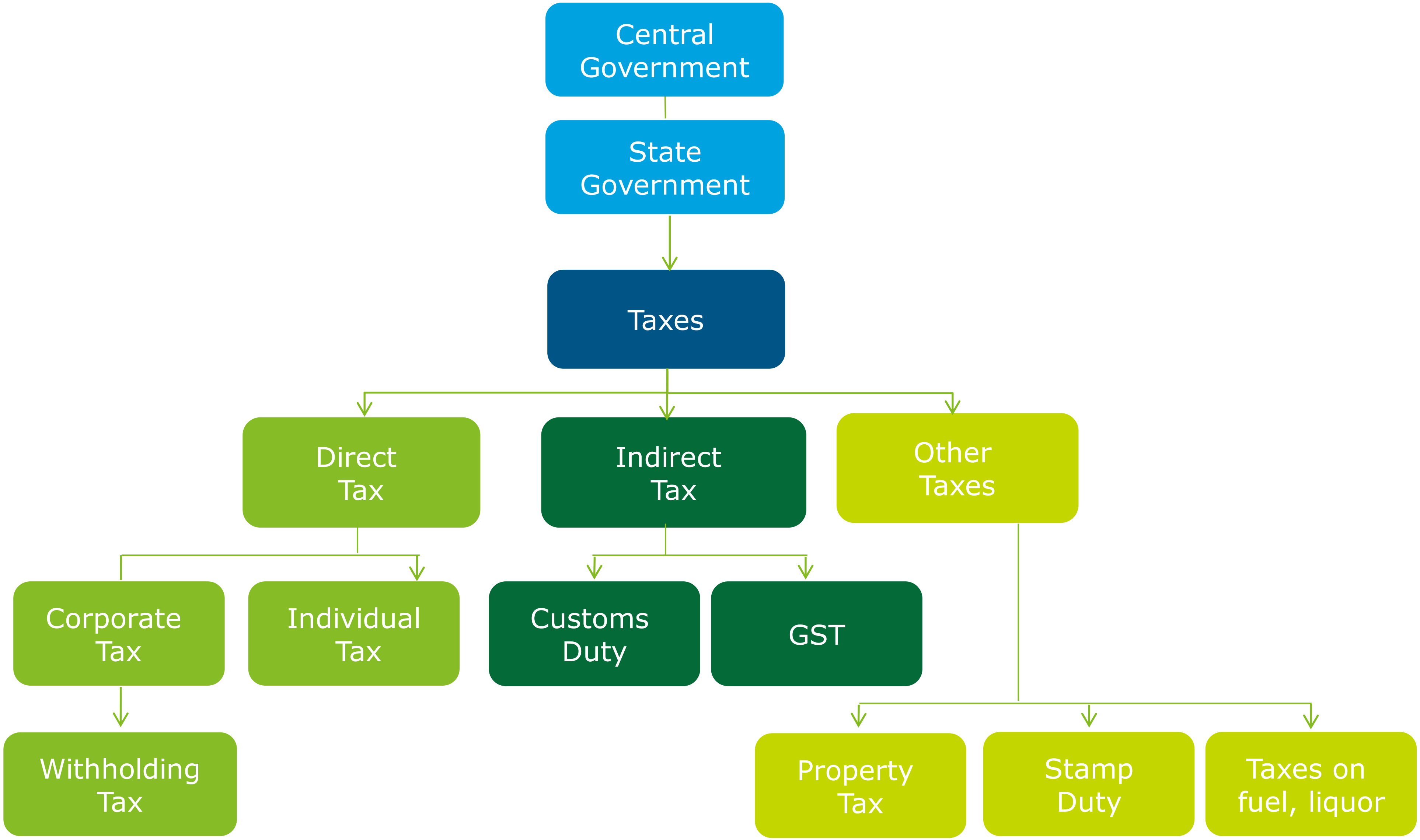
Deloitte.

Overview of Indian Tax system

July 2017

Overview of Indian taxes

Tax legislation in India
Overview



Corporate tax
Overview

Residents taxed on global income and non residents taxed on income accrued/ received in India

Business losses can be carried forward for eight years - no time limit for carry forward of depreciation

Thin capitalization rules under tax law - Interest expense claim restricted to 30% of EBITDA

Indian entities and foreign entities having a base in India (exempt under certain situations), liable to 18.5% MAT plus surcharge and cess

Most internal reorganizations exempt subject to conditions

Wide Treaty network/ Advance Rulings/ Extensive Withholding tax regime

Indian entities liable to dividend distribution tax (~20% considering grossing-up)

Tax holidays available for exports from notified areas and manufacturing activities in specified backward regions

Transfer pricing regime requiring extensive documentation and reporting

Corporate tax

Key income-tax rates under domestic tax law

Particulars	Rates (%)
Corporate tax rate - Domestic company	30.9 / 33.06 / 34.61
• In case turnover is less than INR 5 crores in FY 14-15	29.87/ 31.96/ 33.45
• In case turnover is less than INR 50 crores in FY 15-16	25.75/ 27.55/ 28.84
• New manufacturing companies (including R & D relating to manufacturing) set up on or after March 01, 2016 (at the option, subject to not claiming certain specified deductions/claims)	25.75/ 27.55/ 28.84
DDT applicable to Domestic company (considering grossing-up)*	17.65 (effective rate 20.36%)
Effective tax rate for Foreign company	41.2 / 42.02 / 43.26
Minimum alternative tax (MAT) for Domestic Company	19.05 / 20.39 / 21.34
Withholding tax on interest on eligible foreign debt and long-term infra bonds	5.15 /5.25 / 5.41
Capital gains tax on sales of listed shares of Indian company through stock exchange* [long term if held for more than 12 months]	NIL (long term) / 15 (short term)
Capital gains tax on sale of unlisted shares of Indian company (by non resident)* [long term if held for more than 24 months]	10 (long term) / 40 (short term)
Tax on buy back of its own shares by the Indian Company*	20 (from 1 June 2013)
Royalty/Technical Service Fees*	10 (under domestic tax law; subject to treaty benefit)

Corporate tax rate to reduce to 25% in coming years

* Rates exclusive of surcharge and education cess which will apply as applicable

Transfer Pricing
Key legislative framework

- Indian TP legislation framework enacted in 2001 – broadly based on OECD Guidelines
- Comprehensive legislation including:
  - Mandatory compliance to maintain "contemporaneous documentation"
  - Annual filing of "information form" on inter-company transactions
  - Associated penalty clauses for non-compliances
- Covers Specified Domestic Transactions (in some cases) as well as deemed international transactions
- Rampant litigation at the lower level tax authorities with significant adjustments
- Indian judicial rulings are in the form of speaking orders and in line with globally accepted principles
- Indian position aligned to BEPS reports for most issues
- Increasingly, clients are focusing on APAs as a means of getting certainty and dispute resolution

Typical areas of controversy

- Advertising & Marketing expenses
- Marketing & sales support services
- Cross border services
- Cost recharges
- Royalties
- Arms Length Margin (3% threshold)
- Choice of Comparables
- Location savings

152 APAs
entered into out **of**
815 applications
filed till 31 March 2017
[as per India's APA Annual Report issued on 1 May 2017]

Indirect tax

Goods and service tax (GST) – Overview

- Tax on supply of goods or services or both - alcohol, electricity, real estate and five major petroleum products are outside GST
- Destination based consumption tax
- Shift of taxable event from manufacture/ sale/ provision of service to supply of goods or services
- Integration of Central levies, State levies and local levies
- Seamless credit across entire supply chain and across all the States
- GST rates for supply of goods and services - 5%, 12%, 18% and 28%; Exports are zero rated
- GST Compliance driven by IT platform (GSTN) and to be extremely robust – strong requirement for ERP / IT preparedness

Central GST (taxes subsumed)

- Central Excise Duty/Additional Excise Duty
- Additional Customs Duty/Special Additional Duty*
- Service tax
- Central Sales Tax
- Surcharge/Cess

* Imports are subject to IGST which would be sum of CGST and SGST

State GST (taxes subsumed)

- VAT/Sales Tax
- Entry Tax /Purchase Tax
- Luxury Tax / Entertainment Tax*
- Taxes on Lottery/ Betting & gambling
- Local Body Tax/ Octroi

*other than tax levied by the local bodies

One of the most radical economic reforms in India – introduced from 01 July, 2017

Indirect tax

Goods and service tax (GST) – Key areas to watch out for

ERP/Biz. process changes

- Minimum business disruption, maximum compliance
- Revamping P2P, O2C and R2R business processes

Transition planning

- Seamless transfer of input tax credits
- Applicability of GST or existing taxes on certain cut-over period transactions

Impact on cost/working capital

- Impact of GST on business transactions and associated increase/decrease in cost and working capital

Contractual changes

- Change in contract terms to avoid financial risks arising due to non-compliance by suppliers/customer

Compliance

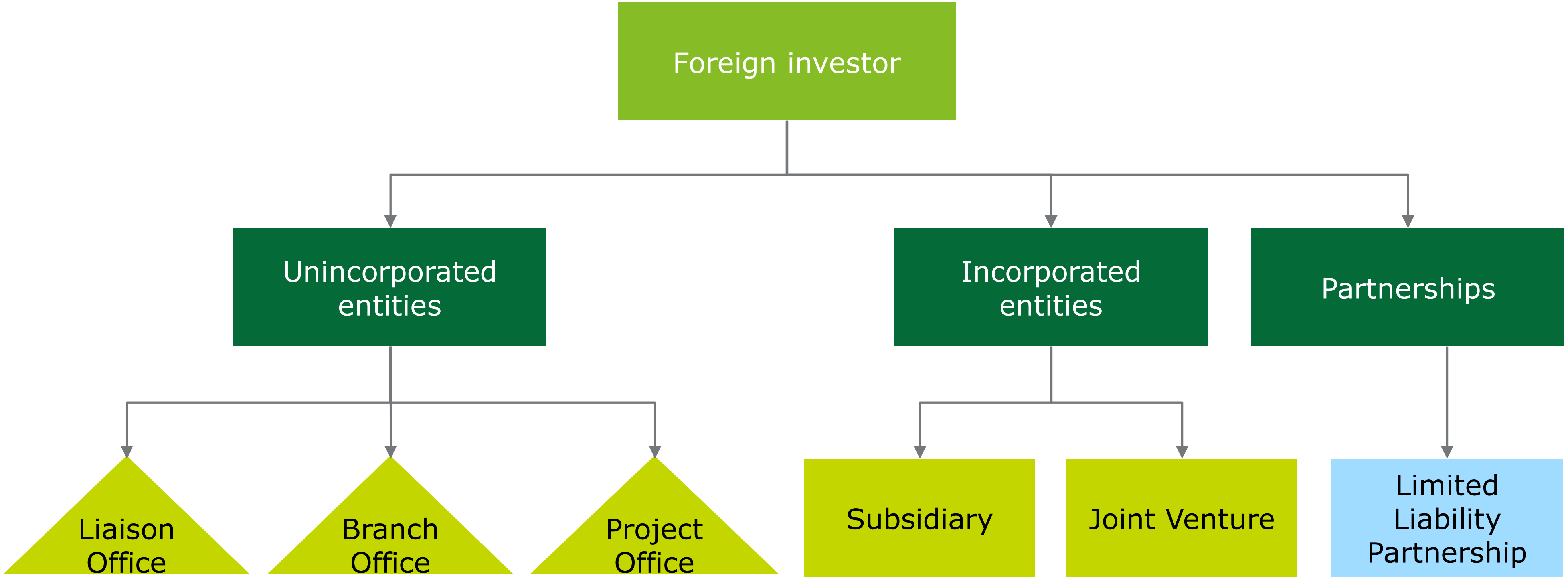
- Requirement of multi state registration
- Use Govt. approved service providers for filing of returns

Anti-profiteering

- Benefits arising out of increased input tax credits and reduced tax rates need to be passed on to customers

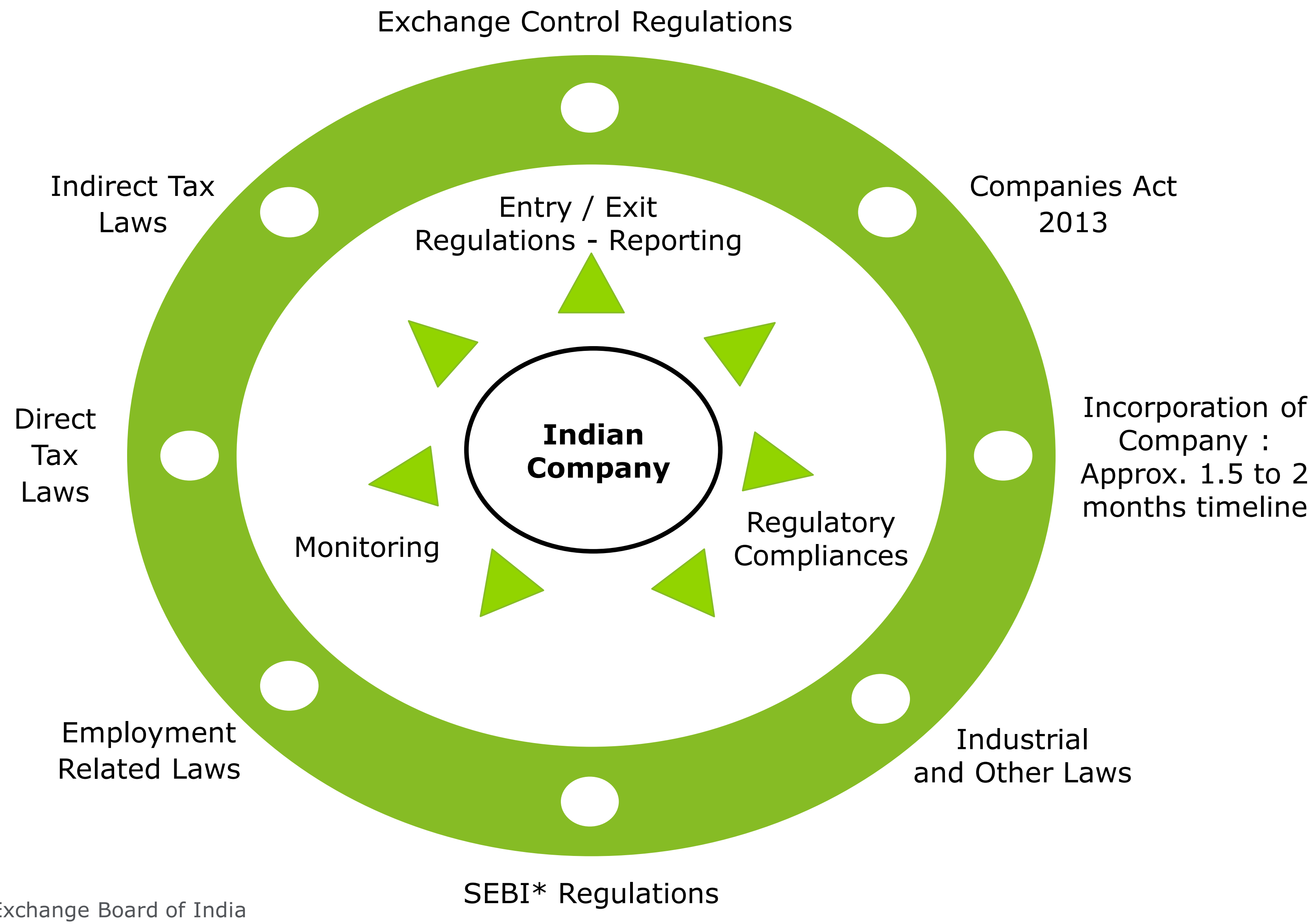
Indian Regulatory system

Forms of business presence in India



LLP is now permitted under the Automatic route for sectors where 100% FDI is allowed in an Indian company

Indian Regulatory Overview



* Securities & Exchange Board of India

Make in India

Focus on 'Make in India'

National Manufacturing Policy

Objectives

- Increasing manufacturing sector growth to 12 – 14%
- Manufacturing contribution to GDP at 25% by 2022 from 16% now
- 100 million additional jobs in manufacturing by 2022
- Skill set creation among rural migrant and urban poor for inclusive growth
- Increased domestic value addition and technological depth
- Enhanced global competitiveness
- Sustainability of growth

Enablers

Rationalization and simplification of business regulations
- Minimizing approvals and compliance requirements
- Labor law reforms

Simple and fast exit mechanisms
- Job loss policy
- Sinking fund
- Asset redeployment
- Exemption from Capital Gains tax

Trade policy
- Measures to protect export of products and services from India from border measures
- NMCC to make recommendations on duty structures to protect domestic manufacturing

Foreign investment
- Conducive FDI policy environment
- Incentives – tax concessions and subsidies

Technology acquisition and development
- Incentives / schemes to promote new technologies
- Access to technologies through JVs
- Technology Acquisition and Development Fund(TADF) with focus on SMEs
- Incentives for green manufacturing
- Compulsory licensing
- 100% tax holiday for 3 years to start-ups involved in innovation & development of new products

Special focus sectors
- Employment intensive industries like textiles and garments; leather and footwear; gems and jewellery; and food processing
- Capital goods like machine tools; heavy electronic equipment; heavy transport, earth moving and mining equipment; high technology equipment like telecom, power, ICT and electronic hardware
- Strategic industries like aerospace; shipping; IT and electronic hardware; renewable energy; solar, wind etc; defence equipment
- Automotive and Pharmaceutical industries

Industrial training and skill upgradation
- Skill building among minimally educated workforce
- establishment of ITIs in PPP mode
- Specialized skill development through establishment of Polytechnics

Small & Medium Enterprises
- Access to finance
  - Setting up of a stock exchange for SMEs
  - Easier access to bank finance
  - SMEs in manufacturing as part of 'priority sector' lending

Government procurement
- Stipulation of local value addition for procurement of equipments by government / government agencies
  - Solar energy
  - IT hardware, IT based security systems
  - Fuel efficient transport equipment
  - Equipments for infrastructure sector – power, roads, mining, aviation, shipping, railways

Clustering and aggregation - National Investment Manufacturing Zones (NIMZ)

Manufacturing Industry Promotion Board (MIPB) chaired by Union Minister of Commerce & Industry will monitor the implementation of the National Manufacturing Policy

Focus on 'Make in India'

Approved - NIMZs

- Ahmedabad-Dholera Investment Region, Gujarat
- Shendra-Bidkin Industrial Park City, Aurangabad, Maharashtra
- Manesar-Bawal Investment Region, Haryana
- Khushkhera-Bhiwadi-Neemrana Investment Region, Rajasthan
- Pithampur-Dhar-Mhow Investment Region, Madhya Pradesh
- Dadri-Noida-Ghaziabad Investment Region, Uttar Pradesh
- Dighi Port Industrial Area, Maharashtra
- Jodhpur-Pali Investment Region, Rajasthan
- Kuhi and Umred Taluka of Nagpur district, Maharashtra
- Tumkur, Karnataka
- Chittoor, Andhra Pradesh
- Medak, Telangana
- Prakasam, Andhra Pradesh
- Gulbarga, Karnataka
- Kolar, Karnataka
- Bidar, Karnataka
- Kalinganagar, Jajpur District, Odisha
- Ramanathapuram District, Tamil Nadu
- Auraiya District, Uttar Pradesh
- Jhansi District, Uttar Pradesh

Highlights

- The NIMZs in Uttar Pradesh, Haryana, Rajasthan, Gujarat, Madhya Pradesh and Maharashtra are aligned to the Delhi – Mumbai Industrial Corridor (DMIC) project – An infrastructure project of USD 90-billion, with financial & technical support from Japan amounting to USD 4.5 billion
- Other Industrial corridors include: Bengaluru – Mumbai Economic Corridor, Amritsar – Kolkata Industrial Corridor, Chennai – Bengaluru Industrial Corridor and Vishakhapatnam – Chennai Industrial Corridor
- Except for Andhra Pradesh, NIMZ in other states could not be started due to unavailability of 50 sq. km. DIPP henceforth relaxed the requirement of land to 10 sq. km

Key Incentives available in India
for Infrastructure companies

Income-tax –

- 100% deduction for capital expenditure* allowed in year of incurrence
  - Sectors such as roads, highway projects, water supply projects, ports, etc. are covered.
  - Power sector not covered.

- 100% deduction of profits for approved housing projects*
  - Housing projects approved before 31 March 2019 are eligible
  - Minimum alternate tax applicable (tax credit available for set-off)

**Subject to fulfilment of specified conditions*

Indirect taxes –

- Increased ability to take input credits under the GST regime

- Lower GST rate of 5% has been prescribed for renewable sector (average rate of 18% prescribed for other sectors)

Key Incentives available in India

Other tax and fiscal

Nature of benefit	Taxpayer category	Sunset date
Additional depreciation @ 20% on new P&M acquired and installed (part of overall 100% depreciation)	Manufacturing & power generation sectors	No sunset date
Additional depreciation @ 35% on new P&M acquired and installed (part of overall 100% depreciation)	Manufacturing sector in backward areas*	31.3.2020
Investment allowance @ 15% if actual cost of new P&M acquired and installed > Rs. 25 Cr in a FY	Manufacturing sector	31.3.2018
Investment allowance @ 15% if new P&M acquired and installed after 31.3.2015	Manufacturing sector in backward areas*	31.3.2020
Weighted Deduction of expenditure (except land & building) on notified "skill development projects"	Manufacturing and other specified sectors	150% till 31.03.2020; 100% after 31.3.2020.
Deduction for 3 years at the rate of 30% of additional wages paid to the new regular workmen employee	All taxpayers	No sunset date
Weighted deduction of expenditure incurred on scientific research – effective reduction in tax cost.	All taxpayers	150% till 31.03.2020; 100% after 31.3.2020.

* Andhra Pradesh, Telangana, West Bengal and Bihar

Key Incentives available in India

Other tax and fiscal

- An SEZ is defined to mean a specifically delineated duty free enclave and is deemed to be a foreign territory for the purposes of trade operations, duties and tariffs
- A SEZ unit needs to have a positive net foreign exchange earning i.e. primarily Export earnings
- **Income-tax** - Business income earned from exports by SEZ unit is eligible for income tax benefits

Year 1 - 5	Year 6 - 10	Year 11 - 15
100% of export profits are exempt	50% of export profits are exempt	Lower of 50% of export profits or amount transferred to special reserve

- However, profits of SEZ unit are subject to MAT regime, MAT Tax available as a credit to be offset against regular tax over the next 15 years
- **Indirect taxes** – Upfront exemption from customs duty and GST available (subject to conditions).

These Income-tax benefits are available to units which commence eligible activities on or before 31 March, 2020

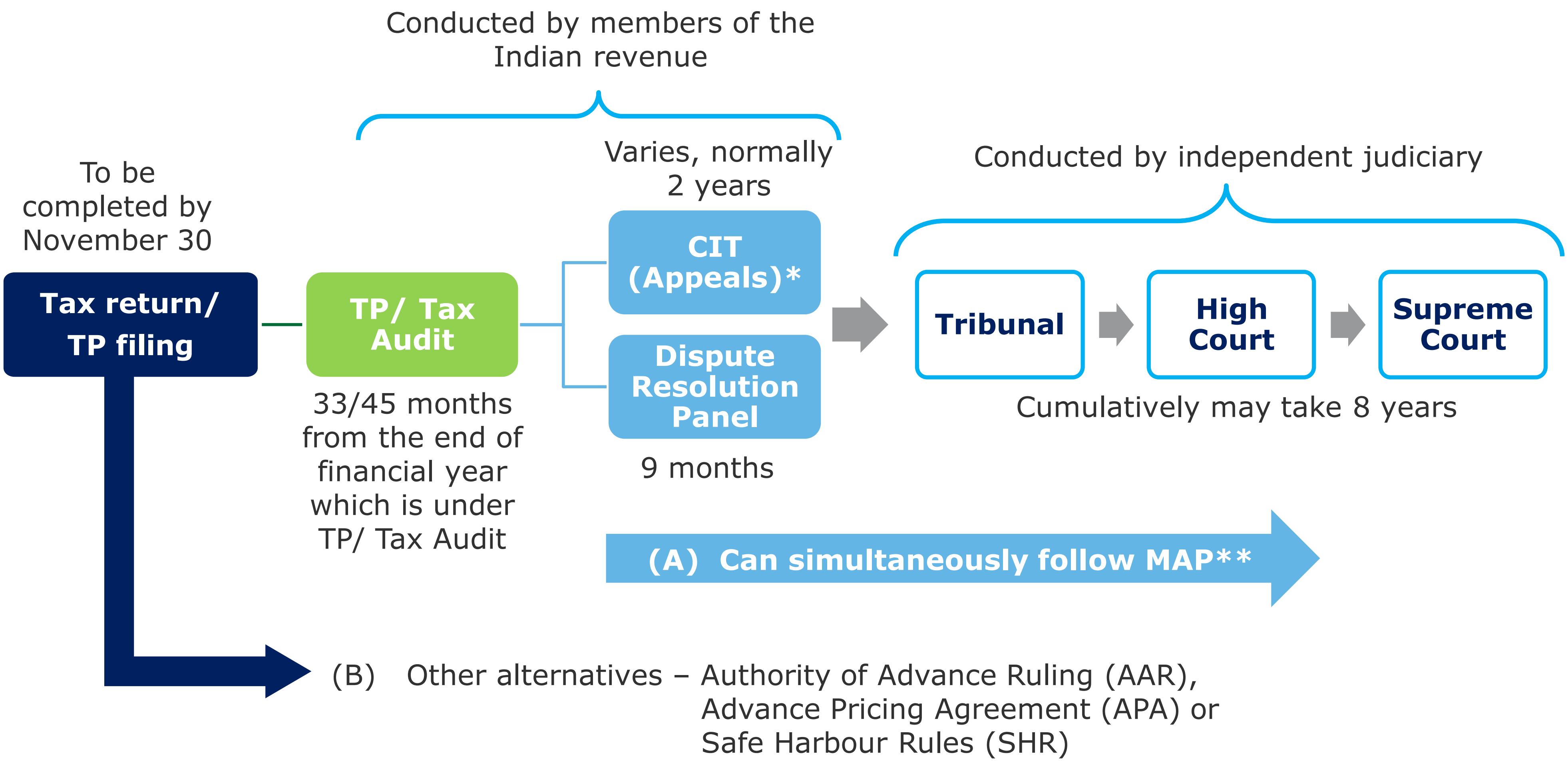
Dispute resolution routes

Dispute resolution Process

- Robust Judiciary Process for resolving direct and indirect tax issues.
- Amendment to Arbitration Act to streamline institutional dispute resolution arrangements in infrastructure
- Indian Supreme Court final decision maker
- Tax Payer as well as Tax Authorities have a fair chance of appealing to Higher authorities.

Income tax - Dispute resolution routes

Time frame and other alternatives



* CIT(Appeals) – Commission of Income-tax (Appeals)
** MAP – Mutual Agreement Procedure