Deloitte.

Taxation and Investment in India 2015

Reach, relevance and reliability

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1.0 Investment climate

1.1 Business environment

India is a federal republic, with 29 states and seven federally administered union territories; the country operates a multi-party parliamentary democracy system. Parliament has two houses: the Lok Sabha (lower house) and the Rajya Sabha (upper house), whose primary functions include approving legislation, overseeing administration, passing the budget, considering public grievances, discussing national policies, etc. The president, the constitutional head of the country and the supreme commander of the armed forces, acts and discharges constitutional duties on the advice of the Council of Ministers, which is headed by the prime minister. The prime minister and the Council of Ministers are responsible to parliament and subject to the control of the majority members of parliament. The states and union territories are governed by independently elected governments.

India has a three-tier economy, comprising agricultural, manufacturing and services sectors. The services sector has proved to be the most dynamic in recent years, with trade, hotels, transport, telecommunications and information technology, financial and business services registering particularly rapid growth.

To attract and promote foreign investment with a view to accelerating economic growth in tandem with domestic capital, technology and skills, an investor-friendly foreign direct investment (FDI) policy has been put in place and is reviewed on an ongoing basis. Recently, significant changes in the FDI policy have been made, including changes to permit FDI in multi-brand retail, single-brand retail, commodity exchanges, power exchanges, broadcasting, mass rapid transport systems and the defense sector, within specified sectoral cap limits and subject to conditions for each sector.

India is a prominent member of various international organizations, including the United Nations, the Asian Development Bank, the South Asian Association for Regional Cooperation (SAARC), the G20 industrial nations, etc.

India has concluded a number of bilateral and regional trade agreements with key trading partners that provide for preferential tariff rates on goods and foster broader economic cooperation.

Price controls

The central and state governments have passed legislation to control the production, supply, distribution and price of certain commodities. The central government is empowered to list any class of commodity as essential and can regulate or prohibit the production, supply, distribution, price and trade of such commodities for the following purposes: to maintain or increase supply; to ensure equitable distribution and availability at fair prices; and to secure an essential commodity for the defense of India or the efficient conduct of military operations.

Intellectual property

Indian legislation covers patents, copyrights, trademarks, geographical indicators and industrial designs. The Patent Act, 1970 has been amended several times to meet India's commitments to the World Trade Organization (WTO), such as an increase to the term of a patent to 20 years.

Trademarks can be registered under the Trade Marks Act, 1999, which provides for registration of a trademark for services in addition to goods, simplifies procedures, increases the registration period to 10 years and provides a six-month grace period for the payment of renewal fees. Copyrights are protected on published and unpublished literary, dramatic, musical, artistic and film works under the Copyright Act, 1957. Subsequent amendments have extended protection to other products (e.g. computer software); improved protection of literary and artistic works; and established better enforcement. The protection term for copyrights and rights of performers and producers of phonograms is 60 years.

India is a signatory to the Paris Convention for the Protection of Industrial Property and the Patent Co-operation Treaty, and it extends reciprocal property arrangements to all countries party to the convention. The convention makes India eligible for the Trademark Law Treaty and the Madrid Agreement on Trademarks. India also participates in the Bern Convention on Copyrights, the Washington Treaty on Layout of Integrated Circuits, the Budapest Treaty on Deposit of Micro-organisms and the Lisbon Treaty on Geographical Indicators.

As a member of the WTO, India has enacted the Geographical Indications of Goods (Registration & Protection) Act (1999).

1.2 Currency

The currency is the Indian rupee (INR).

1.3 Banking and financing

India's central bank is the Reserve Bank of India (RBI), which is the supervisory authority for all banking operations in the country. The RBI, established under an act of the parliament, is the umbrella network for numerous activities related to the financial sector, encompassing and extending beyond the functions of a typical central bank. The primary roles of the RBI include the following:

- Monetary authority;
- Issuer of currency;
- Banker and debt manager to the government;
- Banker to banks;
- Regulator of the banking system;
- Manager of foreign exchange;
- Maintainer of financial stability; and
- Regulator and supervisor of the payment and settlement systems.

The RBI also has a developmental role.

The RBI formulates, implements and monitors monetary policy. It is responsible for regulating nonbanking financial services companies, which operate like banks but otherwise are not permitted to carry on the business of banking.

The banking sector in India is broadly represented by public sector banks (where the government owns a majority shareholding); private sector banks; foreign banks operating in India through their branches/wholly-owned subsidiaries; regional rural banks; district central cooperative banks; and cooperative banks (which usually are regional). The RBI also has announced options for setting up small finance banks and payment banks. Small finance banks will focus on unserved and underserved sections of the population, including small business, the farming sector and large, unorganized sector entrepreneurs and labor. Payment banks are expected to facilitate payments and remittance services for migrant labor, small business and other users.

Stringent rules govern the operations of systemically important nondeposit-taking, nonbanking financial services companies, such as those with assets of INR 1 billion or more, to reduce the scope of regulatory arbitrage vis-à-vis a bank.

1.4 Foreign investment

FDI in India must be undertaken in accordance with the FDI policy formulated by the government. The Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry issues a consolidated FDI policy on an annual basis, announces policy changes during the year and clarifies the FDI policy and process.

Many foreign companies use a combination of exporting, licensing and direct investment in India. India permits 100% foreign equity in most industries.

While the FDI regime has been liberalized and many restrictions eliminated, the Indian government maintains sector-specific caps on foreign equity investment in certain sectors such as insurance, defense, banking, basic and cellular telecommunications services, banking, civil aviation, retail trading etc.

FDI can be made through two routes: the automatic route and the approval route:

- **Automatic route:** A foreign investor or an Indian company does not need the approval of the government or the RBI to make an investment. The recipient (Indian company) simply must notify the RBI of the investment and submit specified documents to the RBI through an authorized dealer. Where there are sector-specific caps for investment, proposals for stakes up to those caps are automatically approved, with a few exceptions. FDI of up to 100% is permitted under the automatic route for manufacturing of medical devices, under the pharmaceutical sector rules. FDI (including the establishment of wholly-owned subsidiaries) is allowed under the automatic route in all sectors, except those specifically listed as requiring government approval. The government has established norms for indirect foreign investment in Indian companies, according to which an investment by a foreign company through a company in India that is owned and/or controlled by a nonresident entity would be considered a foreign investment.
- **Approval route:** Proposed investments that do not qualify for the automatic route must be submitted to the Foreign Investment Promotion Board (FIPB); areas where FIPB approval is required include tea plantations, defense, up-linking of news and current affairs television channels, print media, private security agencies, multi-brand retail trading, brownfield pharmaceuticals, etc.

Investment in certain sectors is prohibited even under the approval route, such as those involving lotteries, gambling and betting, the manufacturing of cigarettes, the real estate business, construction of farm houses, atomic energy, railway operations (other than “railway infrastructure”), trading in transferable development rights, chit funds and “Nidhi” companies.

Overseas investors (such as foreign portfolio investors (FPIs), qualified foreign investors (QFIs), foreign venture capital investors (FVCIs), nonresident individuals (NRIs) and persons of Indian origin (PIOs)) are permitted to invest in Indian capital markets. FPIs must register with designated depository participants (DDPs) authorized by the Securities and Exchange Board of India (SEBI), and FVCIs must register with the SEBI.

Indian companies are permitted to issue equity shares, fully and mandatorily convertible debentures, fully and mandatorily convertible preference shares, warrants and partly paid equity shares, subject to certain conditions, pricing guidelines/valuation norms and reporting requirements.

1.5 Tax incentives

India’s investment incentives are designed to channel investments to specific industries, promote the development of economically lagging regions and encourage exports of goods and services. The country offers a number of benefits, including tax and nontax incentives for establishing new industrial undertakings; incentives for specific industries such as power, ports, highways, electronics and software; incentives for units in less-developed regions; and incentives for units exporting or in special economic zones (SEZs).

Incentives include the following:

- Tax holidays, depending on the industry and region;
- Weighted deductions at 200% for in-house research and development (R&D) expenses, including capital outlays (other than those for land) in the year incurred. Companies also may claim a deduction for expenses incurred in the three years immediately preceding the year in which the company commenced business;
- Accelerated depreciation for certain categories of property, such as energy-saving, environmental protection and pollution control equipment; and
- An additional deduction for new investment made in plant and machinery.

The central government’s development banks and the state industrial development banks extend medium- and long-term loans, and sometimes take equity in new projects. Some Indian states provide additional incentives.

Benefits under foreign trade policy

Various tax and other incentives are granted on exports of goods and services, as well as on imports of inputs and capital goods for use in exports of goods and services. The incentives are granted under various schemes. Some popular schemes include the following:

- Export promotion of capital goods scheme;
- Advance authorization scheme for import of inputs;
- Drawback/rebate scheme for duty on inputs used in exports;
- Focus market and focus product schemes;
- Served from India scheme; and
- Export oriented unit scheme.

Benefits under state industrial policy

Depending on the scale of investment and the need for economic development of specific regions or industries, various incentives are granted to qualifying units.

These benefits generally are available for specified periods and are subject to compliance with prescribed conditions, including employment of local people of the specified region. For example, in Maharashtra, the following incentives are available under the Package Scheme of Incentives, 2013:

- Industrial promotion subsidy, which is linked to payment of VAT/central sales tax;
- Interest subsidy on term loans obtained for the acquisition of fixed assets;
- Exemption from the payment of electricity duty for a specified period;
- Waiver from stamp duty; and
- Power tariff subsidy for specified industries (namely micro, small and medium manufacturing enterprises) for three years for specified units.

Benefits to SEZ units

Units set up in the areas designated as SEZs are granted various tax benefits. Indirect tax benefits include the following:

- Exemption from customs duty on the import of capital goods and inputs;
- Exemption from excise duty on the domestic procurement of goods;
- Exemption from service tax on the procurement of input services that are wholly consumed in SEZs;
- Exemption from excise duty on the manufacture of goods in SEZs;
- Exemption from central sales tax on interstate purchases of goods; and
- VAT benefits on intrastate purchases (subject to the provisions of state VAT law).

1.6 Exchange controls

The government sets India's exchange control policy in conjunction with the RBI, which administers foreign exchange (forex) regulations. The Foreign Exchange Management Act, 1999 established a simplified regulatory regime for forex transactions and liberalized capital account transactions. The RBI is the sole monitor of all capital account transactions.

The rupee is fully convertible on the current account, and forex activities are permitted unless specifically prohibited.

The RBI allows branches of foreign companies operating in India to freely remit net-of-tax profits to their head offices through authorized forex dealers, subject to RBI guidelines.

2.0 Setting up a business

2.1 Principal forms of business entity

The principal forms of doing business in India are the limited liability company (public company or private company, or one-person company (OPC)); limited liability partnership (LLP); partnership firm; association of persons; representative office, branch office, liaison office, project office or site office of a foreign company; and trust. Foreign investors may adopt any recognized form of business enterprise. The limited liability company is the most widely used form for a foreign direct investor. Joint ventures also are popular.

The formation, management and dissolution of limited liability companies is governed by the Companies Act, 1956, which is being phased out by the new Companies Act 2013 (the "Companies Act"), which is administered by the Ministry of Corporate Affairs through the Registrar of Companies (ROC), the Regional Director, the Company Law Board, the Official Liquidator and National Company Law Tribunal and special courts.

Formalities for setting up a company

A foreign company can commence operations in India by incorporating a company under the Companies Act as a subsidiary (including a wholly-owned subsidiary) or as a joint venture company.

Private or public companies and OPCs are formed by obtaining name availability approval, and then registering the memorandum and articles of association and prescribed forms with the ROC in the state in which the registered office is to be located. If the documents are in order, the ROC issues a certificate of incorporation. The filing for company formation is made in electronic form.

Before commencing business or exercising borrowing power, companies formed under the Companies Act are required to file a declaration with the ROC, to the effect that subscription funds have been received from every subscriber; the minimum paid-up share capital has been received; and the registered office of the company has been verified

All directors or proposed directors must obtain a director identification number and must obtain a digital signature certificate from the certifying authority for electronic filings.

Depending upon the nature of the business activities and the business sector, companies need to register with the relevant sector regulators:

- Financing and investing operations, etc., must register with the RBI as nonbanking finance companies;
- Asset reconstruction companies must register with the RBI;
- Insurance services (life and nonlife) and insurance broking companies, etc., must register with the Insurance Regulatory Development Authority;
- Stockbrokers, sub-brokers, merchant bankers, underwriters, custodians, portfolio managers, credit rating agencies, mutual funds, asset management companies, alternate investment funds, investment advisors, research analysts, share transfer agents etc., must register with the SEBI; and
- Pension funds must register with Pension Fund Regulatory and Development Authority, etc.

Forms of entity

Companies are broadly classified as private limited companies, public limited companies and OPCs. Companies may have limited or unlimited liability. A limited liability company can be limited by shares (the liability of a member is limited up to the amount unpaid on shares held) or by guarantee (the liability of a member is limited up to the amount for which a guarantee is given). Companies limited by shares are a common form of business entity. Public limited companies can be closely held, and unlisted or listed on a stock exchange.

An OPC is a company having only one person as its member. A natural person who is an Indian citizen and resident in India is eligible to incorporate an OPC. The memorandum of an OPC must indicate the name of the person who would become the member in the event of death or incapacity of the sole member.

A private company is a company that, by virtue of its articles of association, prohibits any invitation to the public to subscribe for any of its securities; restricts the number of members to 200 (excluding employees and former employees); and restricts the right to transfer its shares.

A public company is a company that is not a private company. A public company may offer its shares to the general public, and no limit is placed on the number of members. A private company that is a subsidiary of a company that is not a private company also is considered a public company

A "section 8" company (i.e. a "section 25" company under the Companies Act 1956) is a company formed for the purpose of promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment or other useful objective that intends to apply its profits (if any) or other income in promoting its objects. A section 8 company is not permitted to pay dividends to its members. It must be licensed by the government (this power is delegated to the ROC) and can be incorporated as a private or public company with liability limited by shares or by guarantee.

Requirements for public and private company

Capital: A public limited company must have a minimum paid-up capital of INR 500,000; a private limited company must have INR 100,000.

Types of share capital: There are two types of shares under the Company Law: preference shares and equity shares. Preference shares carry preferential rights in respect of dividends at a fixed amount or at a fixed rate before holders of the equity shares can be paid, and carry preferential rights with respect to the repayment of capital on winding up or otherwise. In other words, preference share capital has priority in repayment of both dividends and capital. The tenure of preference shares generally is a maximum of 20 years. Companies engaged in infrastructural projects may issue preference shares for a period exceeding 20 years, but not exceeding 30 years.

Equity shares are shares that are not preference shares. Equity shares can be shares with voting rights or shares with differential rights as to dividends, voting, etc. A company may issue equity shares with differential rights for up to 26% of the total post-issue paid up equity share capital if it has distributable profits in the preceding three years and has complied with other conditions. Listed public companies cannot issue shares in any manner that may confer on any person superior rights as to voting or dividends vis-à-vis the rights on equity shares that are already listed.

Securities can be held in electronic (dematerialized) form through the depository mode. In the case of a public/rights issue of securities of listed companies, the company must give investors an option to receive the securities in physical or electronic form. For shares held in dematerialized form, no stamp duty is payable on a transfer of the shares. Shares of an unlisted public company or private company also may be held in dematerialized form.

Members: An individual or legal entity, whether Indian or foreign, may be a member of a company. A public company must have at least seven members; the minimum number of members in a private company is two and the maximum is 200 (excluding employees and former employees); and an OPC may have only one person as a member.

Management: Listed companies and public limited companies with paid-up capital of INR 100 million or more must appoint (i) a managing director or a full-time director or manager or Chief Executive Officer (CEO); (ii) a Chief Financial Officer (CFO); and (iii) a Company Secretary (CS), as its full-time key managerial personnel (KMP). The maximum term of a managing director/manager of any company is five years, which may be renewed. A KMP may not hold office in more than one company, except in a subsidiary company.

Board of directors: Only individuals may be appointed as directors. A public limited company must have at least three directors; private company must have at least two directors; and an OPC must have at least one director. Companies can have a maximum of 15 directors and may increase this number with the approval of the members by special resolution.

Every company must have at least one resident director who has stayed in India for a total period of at least 182 days in the previous calendar year.

Every listed company or other public company having paid-up share capital of at least INR 1 billion or turnover of INR 3 billion is required to appoint a female director.

At least one-third of the total number of directors of a listed company must be independent directors (IDs). Public companies having paid-up share capital of at least INR 100 million; turnover of INR 1 billion; or aggregate outstanding loans, debentures and deposits exceeding INR 500 million must have at least two IDs.

Directors are elected by a simple majority, or by methods provided in the articles of association. Remuneration of the directors of a company is subject to ceilings and requires approval of the central government if the company has insufficient profits or has losses, subject to certain conditions.

Board meetings may be held anywhere. A minimum of four board meeting must be held every year, and the time gap between two consecutive meetings cannot exceed 120 days. Barring certain exceptions, the board has full powers and may delegate its powers to a committee of the board.

Board committees: Listed companies and public companies having paid-up capital of at least INR 100 million; turnover of INR 1 billion; or aggregate loans, borrowings, debentures or deposits of INR 500 million must form an audit committee, consisting of a minimum of three directors, a majority of which must be IDs. Such companies also must form a nomination and remuneration committee, consisting of a minimum of three or more nonexecutive directors, at least half of which must be IDs.

General meeting: An annual general meeting (AGM) of members must be held at least once each year (except for an OPC), and the time gap between two AGMs should not exceed 15 months (extendable up to three months with approval of the ROC, except for the first AGM). The first AGM must be held within nine months from the date of closing of the first financial year of the company (the first period ending on 31 March); in such a case, it is not necessary to hold the first AGM in the year of incorporation. Subsequent AGMs must be held within six months from the date of closing of each financial year. Each AGM must be held during business hours (i.e. between 9 a.m. and 6 p.m. on any day that is not a national holiday) and must be held at either the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. Among the business to be addressed at an AGM is approval by the members of the audited financial statements for the financial year, declaration of dividends and appointment of an auditor and directors.

An extraordinary general meeting can be called by the board of directors at the request of holders of 10% of the paid-up share capital.

A quorum is established in the case of a private company when a minimum of two members are present personally at a meeting. In the case of a public company, the minimum requirements are as follows (a) five members personally present, if the number of members is no more than 1,000; (b) 15 members personally present, if the number of members is more than 1,000 and up to 5,000; and (c) 30 members personally present if the number of members exceeds 5,000. If a quorum is not present within half an hour of the start of the meeting, then, subject to the provisions of the articles of association, the meeting is adjourned until the following week, at which time all members present, regardless of number, constitute a quorum.

There are two kinds of resolutions that may be passed at a meeting: ordinary and special. An ordinary resolution may be passed by a simple majority of members present in person or represented by proxy. Special resolutions require at least a 75% vote and include proposals for liquidation, transfer of the company's offices from one state to another, buyback of securities, amendment of the articles of association, increases in intercorporate investments/loans, etc.

Unless a poll is demanded by the chairman of the general meeting, by the specified number of members or by the members holding specified shares, the voting at a general meeting is done through a show of hands or is carried out electronically. However, listed companies and companies having at least 1,000 members cannot pass a resolution by a show of hands and must provide their members the ability to exercise their right to vote at general meetings by electronic means. Each member has one vote. In the case of a poll, voting rights of a member are in proportion to his/her share of the paid-up equity capital. Preference shareholders have the right to vote only on matters that directly affect the rights attached to preference shares. Preference shareholders have the same rights to vote as equity shareholders if a dividend has remained unpaid for a specified period.

Board meetings and general meetings also may be held through video conferencing, subject to compliance with requirements specified by the Ministry of Corporate Affairs.

Dividends: Dividends must be paid in cash. Dividend must be deposited into a separate bank account and paid within the stipulated time. Dividends for a financial year can be paid out of: (a) profits of that year, after providing for depreciation; (b) profits of any previous financial year(s) arrived at after accounting for depreciation and remaining undistributed profits; or (c) both. No dividend may be declared unless carried-over losses and depreciation not provided for in earlier years has been set off against the company's profits for the current year.

In the case of losses in the current financial year, any interim dividends declared may not exceed the average of the rates at which dividends were declared in the three years immediately preceding the current year.

In the case of inadequate profits or losses, dividends can be declared out of free reserves, subject to fulfillment of certain conditions.

Corporate social responsibility (CSR):

- Domestic companies and foreign companies having a branch office or project office in India are required to form a CSR board committee if they have a net worth of INR 5 billion or more; turnover of INR 10 billion or more; or a net profit of INR 50 million or more during any of the three preceding financial years.
- The CSR committee must formulate and recommend a CSR policy, recommend expenditure amounts and monitor the CSR policy from time to time.
- The Companies Act sets forth the list of activities for which CSR activities can be undertaken by companies, some of which include promoting health care (including preventive health), promoting education, promoting empowerment of women, ensuring environmental sustainability, protecting national heritage, contributing to the prime minister's national relief fund, promoting rural development projects, promoting slum area development, etc.
- A company's board of directors is required to ensure that the company spends, in a financial year, at least 2% of its average net profits during the three immediately preceding financial years on CSR expenditure.
- The board's reporting requirements for a company include an annual report on CSR.

Limited Liability Partnership (LLP)

An LLP is a body corporate that is a separate legal entity distinct from its partners. An LLP is required to be registered under the Limited Liability Partnership Act, 2008 (LLP Act) with the ROC. Any individual or body corporate (including an LLP, a foreign LLP and an Indian or foreign company) can be a partner in an LLP. An LLP must have at least two partners, and there is no upper limit on maximum number of partners. An LLP also must have at least two designated partners who are individuals, and at least one of them must be resident in India (for bodies corporate, an individual who is a partner or nominee may act as a designated partner). Designated partners are liable for compliance under the LLP Act, and in the event of noncompliance they will be liable for penalties. Every designated partner must obtain a Director's Identification Number (DIN).

The mutual rights and duties of partners of an LLP *inter se*, and those between the LLP and its partners, are governed by an LLP agreement. A partner may transfer the rights to share in the profits and losses of the LLP, either wholly or in part. The financial year of an LLP must end on 31 March.

Among other things, an LLP has the power to sue and may be sued. An LLP can acquire, own, hold, develop or dispose of movable or immovable property. The provisions of the Indian Partnership Act, 1932 do not apply to LLPs. The central government has the power to announce that any of the provisions of the Companies Act may apply to LLPs.

A foreign LLP can establish a place of business in India and carry on its business by registering under the LLP Act. FDI can be brought into an LLP under the government approval route, subject to compliance with requirements stated in the FDI policy.

Branch of a foreign corporation, liaison office, project office

In addition to establishing a wholly-owned subsidiary (or setting up a joint venture or LLP in India), a foreign company may establish its presence in India by setting up a liaison office/representative office (LO/RO), project office/site office (PO/SO) or branch office (BO). However, a BO of a foreign company attracts a higher rate of tax than a subsidiary or joint venture company.

A LO (also known as representative office) acts as a communication channel between the head office abroad and parties in India. A LO is not allowed to undertake any business in India and cannot earn income in India. The expenses of a liaison office must be met out of inward remittances from the head office. A LO may be permitted to promote export from or import to India, promote technical and financial collaboration between a parent/group company and companies in India, represent the parent/group company in India, etc.

Foreign companies engaged in manufacturing and trading may establish a BO in India for the following activities:

- Export/import of goods (retail trading activity of any kind is strictly prohibited);
- Rendering of professional or consulting services;
- Carrying out research work in areas in which the parent company is engaged;
- Promoting technical or financial collaboration between Indian companies and the head office or an overseas group company;
- Representing the head office in India and acting as a buying/selling agent in India;
- Rendering services in information technology and development of software in India;
- Rendering technical support for products supplied by the parent/group companies; and
- Carrying on a foreign airline/shipping business.

The eligibility criteria for setting up a BO or LO center on the track record and net worth of the foreign head office. For a BO, the head office must have a profit-making track record in its home country during the preceding five financial years (three years for a liaison office). The net worth of the foreign head office cannot be less than USD 100,000 or its equivalent to establish a BO (USD 50,000 or its equivalent to establish a LO). Net worth for these purposes is the paid-up share capital (+) free reserves (-) intangible assets (computed as per the latest audited balance sheet or account statement certified by a certified public accountant or registered accounts practitioner).

RBI approval, followed by registration with the ROC, is required to set up a BO of a foreign company, a RO or a LO. Financial statements, annual activity certificates, etc. must be submitted annually to the ROC/RBI.

Foreign companies planning to carry out specific projects in India may establish a temporary PO/SO for the purpose of carrying out activities relating to the project. RBI has granted general permission to foreign companies to establish project offices in India, provided they have secured a contract from an Indian company to execute the project and other requirements are met. If the foreign company cannot meet the requirements, it must seek approval from the RBI before setting up. POs may not undertake or carry on any activities other than those relating to and incidental to execution of the project. Once the project is completed and tax liabilities are met, the PO may remit any project surplus outside India.

BOs, LOs and POs established in India by foreign entities are required to make certain disclosures with the RBI/Director General of Police/ROC upon setup, the occurrence of specified events and annually.

As per the Companies Act 2013, an overseas company/overseas body corporate that has a place of business in India, whether by itself or through an agent, physically or through an electronic mode, and conducts any business activity in India in any other manner is required to register with ROC as a foreign company.

Joint ventures

Joint venture companies commonly are used for investment in India.

Business trusts

Real estate investment trust (REIT) and infrastructure investment trust (Invit) taxation regimes have been introduced to allow these structures (referred to as “business trusts”) to be set up in accordance with SEBI regulations. The investment model for REITs and Invits allows these business trusts to raise capital through an issue of listed units and to raise debt from resident and nonresident investors. Business trusts will be able to acquire a controlling or other specific interest in an Indian special purpose vehicle (SPV) from the sponsor.

2.2 Regulation of business

Mergers and acquisitions

Mergers and acquisitions presently are governed by the Companies Act, 1956 (since corresponding sections of Companies Act 2013 and rules are not effective until specified dates) and sector-specific law, such as insurance, pension and banking laws, etc. The provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009; listing agreements with the stock exchange; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; SEBI (Prohibition of Insider Trading Regulations) 1992 and SEBI (Prohibition of Insider Trading) Regulations, 2015 must be complied with in the case of listed companies. If a merger has cross-border aspects or a non-resident member or investor, the parties must comply with the government’s FDI policy and the Foreign Exchange Management Act, 1999. Indian companies are permitted to acquire businesses/companies abroad if certain conditions are satisfied.

In the case of a public company, broadly, the transfer of the business/assets requires the approval of the members. This can be done with the additional procedure of court approval or can be a simple members’ approval without court approval, depending on the manner of the transfer. In case of a sale, lease or disposal of all, or substantially all, of an undertaking of the company, the shareholders' approval must be obtained.

The Companies Act 1956 permits mergers of foreign company with an Indian company and, once the transition to the Companies Act 2013 is complete, mergers of an Indian company with a foreign company also will be permitted.

A reorganization involving the amalgamation of companies or a tax neutral demerger requires approval of the High Court, as well as members and creditors of the companies, the regional director and official liquidators (for the transferor company in the case of an amalgamation).

If the transferor or transferee company, or both, are listed on a recognized stock exchange, the draft reorganization scheme requires obtaining members’ approval through postal ballot and e-voting, and prior approval of the stock exchange and SEBI before application is made to the High Court.

Where an acquisition exceeds a specified threshold or there is a change in control of a listed company, the acquirer must provide an exit opportunity to the members through a timely public offer with appropriate disclosures. In certain acquisitions, such as an *inter se* transfer of shares between the promoter, Indian promoter and foreign collaborator pursuant to a scheme of arrangement/amalgamation, no open offer is required if certain disclosures are made.

The government can order the amalgamation of two or more companies if this is in the public interest. The Board for Industrial and Financial Reconstruction can issue an order under the Sick Industrial Companies (Special Provisions) Act, 1985 for amalgamation of an ailing industrial company with another company.

Monopolies and restraint of trade

India’s markets are monopolized in only a few areas reserved for the public sector, such as postal services, atomic energy and railways. The government is considering gradual private participation in areas currently reserved for exclusive state ownership. Monopolies are rare in activities open to the private sector.

The Competition Act, 2002 prohibits anti-competitive agreements, including the formation of cartels and the sharing of territories, restrictions of production and supply, collusive bidding and bid rigging and predatory pricing. The following practices are considered objectionable if they lead to a restriction of competition: tie-in arrangements that require the purchase of some goods as a condition of another purchase; exclusive supply or distribution agreements; refusal to deal with certain persons or classes of persons; and resale price maintenance.

The Act prohibits the abuse of a dominant position, i.e. a position of strength enjoyed by an enterprise in the relevant market in India that enables the enterprise to operate independently of competitive forces prevailing in the relevant market, to affect its competitors or consumers or to affect the relevant market in its favor.

The acquisition of control/shares/voting rights/assets of an enterprise, a merger, demerger or an amalgamation, etc., that exceeds a specified threshold of assets/turnover (in and outside India) must be approved by the Competition Commission unless an exemption applies. The Commission functions as the market regulator to prevent and regulate anticompetitive practices.

2.3 Accounting, filing and auditing requirements

Accounting standards

Accounting standards issued by the Institute of Chartered Accountants of India (ICAI), which largely are based on IAS, apply. Financial statements must be prepared annually, in accordance with the accounting standards prescribed under the Companies Act. There are differences between these accounting standards and IFRS.

India has proposed convergence of its accounting standards with IFRS (subject to a few carve-outs); these standards are called the Indian Accounting Standards or the Ind AS. The Ind AS are voluntary for financial year 2015-2016. From accounting periods commencing on or after 1 April 2016, these standards will be mandatory for listed and unlisted companies meeting certain net worth thresholds.

Filing requirements

Companies are required to prepare their financial statements each year, as per the provisions of the Companies Act, and to have them audited by a practicing chartered accountant or a firm of chartered accountants registered with the ICAI. The audited financial statements must be approved by the members in an annual general meeting. All companies are required to file their audited financial statements with the ROC after they have been approved by the members. Filing of the financial statements with the ROC must be in the eXtensible Business Reporting Language (XBRL) for the following companies:

- Companies listed in India and their subsidiaries;
- Companies having a paid up capital of INR 50 million or above; and
- Companies having a turnover of INR 1 billion or above.

Banks, insurance companies, power companies, nonbanking financial companies and their overseas subsidiaries are not subject to mandatory XBRL filing. The fiscal year-end for purposes of filing income tax returns is 31 March for all persons, including companies. A company that has obtained an approval to have a year-end other than 31 March under the Companies Act also will be required to prepare a set of financial statements for the year ending 31 March and have them audited for purposes of filing its income tax return. In addition to the audited financial statements, certain other particulars that are considered in the preparation of the income tax return also must be audited according to provisions in the Income Tax Act.

3.0 Business taxation

3.1 Overview

Authority to levy taxes in India is divided between the central and the state governments. The central government levies direct taxes, such as the corporate income tax (including minimum alternate tax), capital gains tax, dividend distribution tax (DDT) and wealth tax; it also levies indirect taxes, such as central sales tax (CST), securities transaction tax (STT), commodities transaction tax (CTT), customs duty, excise duties and service tax. Transaction taxes are set to witness a major change as India works toward implementing a goods and services tax (GST) throughout the country. Taxes levied at the state level include value added tax (VAT), profession tax and real estate taxes.

Tax incentives focus mainly on establishing new industries, encouraging investment in undeveloped areas, infrastructure and promoting exports. Export and other foreign exchange earnings previously were favored with income tax incentives, but these generally have been phased out, except for predominantly export-oriented units set up in SEZs. The Special Economic Zones Act (2005) grants fiscal concessions for both SEZ developers and units in the SEZs and provides for a legislative framework for establishing offshore banking units and international financial service centers.

Specific taxation regimes for providing certainty in taxation for two new categories of investment vehicles—REITs and Invits (business trusts) have been introduced.

Separate divisions of the Ministry of Finance administer various national taxes. The Central Board of Direct Taxes (CBDT) is responsible for the administration of the direct taxes.

India Quick Tax Facts for Companies	
Corporate income tax rate	30% for resident companies, plus the surcharge and cess 40% for nonresident companies, plus the surcharge and cess
Surcharge	5% for resident companies having income exceeding INR 10 million but less than or equal to INR 100 million, and 10% for resident companies having income exceeding INR 100 million 2% for nonresident companies having income exceeding INR 10 million but less than or equal to INR 100 million, and 5% for nonresident companies having income exceeding INR 100 million
Cess	3%
Branch tax rate	40%, plus the surcharge and cess, applicable to foreign companies
Minimum alternate tax (MAT) rate	18.5%, plus the surcharge and cess, applicable to companies
Alternate minimum tax (AMT) rate	18.5%, plus the surcharge and cess, applicable to persons other than companies
Capital gains tax rates	10%-40%, plus the surcharge and cess, exempt in certain cases
Basis	Worldwide income (residents); income accruing, arising or received in India (nonresidents)
Dividend distribution tax	15%, plus the surcharge and cess

India Quick Tax Facts for Companies	
Tax on distribution of income through buy-back of shares	20%, plus the surcharge and cess
Participation exemption	No, except for DDT in some cases
Loss relief	
− Carryforward	Eight years
− Carryback	No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	No
Controlled foreign company rules	No
Tax year	1 April–31 March
Advance payment of tax	Yes
Return due date for corporations	30 September/30 November (where a transfer pricing report is to be furnished)
Withholding tax	
− Dividends	No
− Interest	10% (resident); 5%/20%/30%/40% (nonresident), plus the surcharge and cess
− Royalties and fees for technical services	10% (resident)/25% (nonresident), plus the surcharge and cess
− Branch remittance tax	No
− Foreign contractors tax	30%/40%, plus the surcharge and cess
− Purchase of immovable property	1%, plus the surcharge and cess
Capital tax	No
Social security contributions	12% of wages
Wealth tax	1%
Real estate tax	Varies
Securities transaction tax	Varies
Stamp duty	Varies
Commodities transaction tax	0.01%
Customs duty	28.85%, including additional duties and cess (basic customs duty is 10%)
Central sales tax	2%
Service tax	12.36%
Central excise duty	12.36%
VAT	1%/5%/12.5%-15% (rates may differ based on the nature of the goods and also may differ from one Indian state to another)

3.2 Residence

A company is considered resident in India if it is incorporated in India or if control and management of its affairs take place wholly in India.

A partnership firm, LLP or other nonindividual entity is considered resident in India if any part of the control and management of its affairs takes place in India.

3.3 Taxable income and rates

Corporate entities liable for income tax include Indian companies and corporate entities incorporated abroad. A resident company is liable for income tax on its worldwide income, including capital gains, less allowable deductions (essentially, outlays incurred exclusively for business purposes). A resident partnership firm, LLP or other nonindividual entity also is liable for income tax on its worldwide income.

A nonresident entity is liable for income tax on income arising in or received in India, or deemed to arise or accrue in India. Income that is deemed to arise or accrue in India includes the following:

- Income arising through or from a "business connection," property, asset or source of income in India;
- Capital gains from the transfer of capital assets situated in India. This now includes capital gains arising from a transfer of a capital asset representing any share or interest in a company or entity registered or incorporated outside India, if such share or interest directly or indirectly derives its substantial value from assets located in India;
- Interest, royalties and technical service fees paid by an Indian resident, nonresident or the Indian government. Payments made to a nonresident for the provision of services are taxable in India even if the services are rendered outside the country, unless the fees are payable in respect of services used in a business or profession carried on by such person outside India or for the purpose of making or earning income from a source outside India.

  The term "royalties" includes payments made for the right to use computer software (including grant of a license), irrespective of the medium used for the same. Further, royalties include any payment made for the use of a process that is transmitted by satellite, cable, optic fiber or any other similar technology, whether or not such process is secret.

Different rates apply to resident and nonresident companies, as mentioned in the above table "India Quick Tax Facts for Companies."

The corporate tax rate for domestic companies is 30%, in addition to a surcharge. A 2% education cess and a 1% secondary and higher education cess (collectively referred to as "cess") also are levied on the amount of income tax, including the surcharge. Accordingly, the effective tax rate for domestic companies is 30.9% (where income is less than or equal to INR 10 million), 32.445% (where income exceeds INR 10 million but is less than 100 million) or 33.99% (where income exceeds INR 100 million).

Nonresident companies and branches of foreign companies are taxed at a rate of 40%, plus a surcharge. The amount of tax is further increased by a 3% cess, bringing the effective tax rate to 41.2% (where income is less than or equal to INR 10 million), 42.024% (where income exceeds INR 10 million but is less than 100 million) or 43.26% (where income exceeds INR 100 million). Under a special provision, dividend income received by a domestic company from a foreign company in which the domestic company has a shareholding of 26% or more is taxable at a concessional rate of 15%, plus the surcharge and cess, on a gross basis. Further, any dividend declared, distributed or paid by such domestic company in the same year in which it receives a dividend from the foreign company will not be subject to DDT (limited to the extent of the dividend repatriated by the foreign company). This provision previously applied until 31 March 2014, and has now been extended indefinitely.

The taxable income of nonresident companies engaged in certain businesses (i.e. prospecting for, extracting or producing mineral oils; civil construction; and testing and commissioning of plants and machinery in connection with turnkey power projects) is deemed to be 10% of amounts specified in the Income Tax Act. Similarly, for nonresidents in the business of operating ships and aircraft, profits and gains from the operations are deemed to be 7.5% and 5%, respectively, of amounts specified in the Income Tax Act.

Partnership firms and LLPs are taxed at 30% (plus the surcharge and cess). The effective tax rate for partnership firms and LLPs is 30.9% (where income is less than or equal to INR 10 million), or 33.99% (where income exceeds INR 10 million). Interest, salary, bonuses, commissions or remuneration to any partner is allowed as a deduction, subject to the fulfilment of certain conditions.

Special tax regimes apply to business trusts and their unitholders, including the following rules:

- Dividends distributed by an SPV are subject to DDT, but are exempt in the hands of the business trust and when distributed to its unitholders.
- Interest income received by a business trust from an SPV is not taxable at the level of the business trust (pass through treatment). However, when the business trust distributes the income to its unitholders, it must withhold tax on the interest component of the income distribution at 10% when distributed to resident unitholders, and at 5% when distributed to nonresident unitholders.
- A business trust may enjoy the benefit of a reduced withholding tax rate of 5% on interest on external commercial borrowings.
- Capital gains arising on the disposal of assets of the business trust are taxable in the hands of the business trust, and exempt when distributed to unitholders.
- Any other income of the trust is taxable at the maximum marginal rate for companies.

Minimum alternate tax

A minimum alternate tax (MAT) is imposed on resident and nonresident corporations, as well as developers of SEZs and units in SEZs. Where the income tax payable on the total income by a company is less than 18.5% of its book profits, the book profits are deemed to be the total income of the company, on which tax is payable at a rate of 18.5%, further increased by the applicable surcharge and cess for both domestic and foreign companies. Thus, the effective MAT rate for a domestic company is 19.06% (where total income is less than or equal to INR 10 million), 20.01% (where total income exceeds INR 10 million but is less than 100 million) or 20.96% (where total income exceeds INR 100 million). For nonresident companies, the effective MAT rate is 19.06% (where total income is less than or equal to INR 10 million), 19.44% (where total income exceeds INR 10 million but is less than 100 million) or 20.01% (where total income exceeds INR 100 million). Tax paid under the MAT provisions may be carried forward for set off against income tax payable in the next 10 years, subject to certain conditions.

MAT is not payable on profits of a “sick” industrial company, starting from the year in which the company becomes a sick industrial company and ending in the year during which its entire net worth becomes equal to or exceeds the accumulated losses.

Alternate minimum tax

An alternate minimum tax (AMT) is imposed on any person (including an LLP) other than a corporation on adjusted total income, at a rate of 18.5%, further increased by the applicable surcharge and cess. From 1 April 2014, AMT also is imposed on a person eligible for investment-linked incentives. Tax paid under the AMT provisions may be carried forward for set off against income tax payable in the next 10 years, subject to certain conditions. AMT is not applicable to individuals, associations of persons and bodies of individuals if their adjusted total income does not exceed INR 2 million.

Dividend distribution tax and tax on distribution of income through buyback of shares

Dividends paid by a resident corporation are exempt from tax in the hands of the recipient, but the resident corporation must pay DDT at a rate of 15%, plus the 10% surcharge and the 3% cess, on dividends declared, distributed or paid. Taking the surcharge and cess into account, the effective DDT rate is 16.995%. From 1 October 2014, DDT payable must be grossed up and calculated as 15% of the aggregate dividend declared, distributed or paid, including the DDT. The DDT is nondeductible by the payer, but an ultimate Indian recipient company can offset the dividends received from an Indian subsidiary against dividends distributed, in computing the DDT tax, if certain conditions are satisfied. Dividends paid to the New Pension Scheme Trust are exempt from DDT. The scope of DDT has been broadened by making developers of SEZs and units in SEZs liable to pay DDT.

The Income-tax Act that provides that an unlisted domestic company is liable to pay additional tax of 20% on any income distributed to a shareholder on account of a buy-back of shares. The distributed income means the consideration paid by the company on the buy-back of shares, reduced by the amount received by the company on account of the issue of the shares. The shareholders will not be charged for any income arising from the buy-back sale of the shares to the company.

Taxable income defined

The law divides taxable income into various categories or "heads" of income. The heads of income relevant to companies are:

- Business or professional income;
- Capital gains;
- Income from house property; and
- Other income.

A company's taxable income generally is determined by aggregating the income from all of the heads.

Business or professional income

The computation of business income normally is based on the profits shown in the financial statements, after adjusting for exempt income, nondeductible expenditure, special deductions and unabsorbed losses and depreciation. It is proposed for the central government to issue standards for computation of income and disclosures relating to particular taxpayers or classes of income.

Dividends paid by a domestic company are exempt from tax in the hands of the recipient if DDT has been paid by the distributing company, but dividends on which DDT has not been paid are taxed as income in the hands of the recipient at the normal rates (unless otherwise provided for in an applicable tax treaty).

Deductions

Various deductions are taken into account in computing taxable income and each head of income has its own special rules. Allowable deductions include wages and salaries, reasonable bonuses and commissions, rent, repairs, insurance, royalty payments, interest, lease payments, certain taxes (sales, municipal, road, property and expenditure taxes and customs duties), depreciation, expenditure for materials, expenditure for scientific research and contributions to scientific research associations and professional fees for tax services.

Specific deductions are allowed as follows:

- A 100% deduction is allowed for interest payments on funds borrowed for business purposes. However, if the funds are borrowed for the acquisition of an asset for the expansion of an existing business or profession, interest paid for any period beginning from the date on which the funds were borrowed for the acquisition of the asset up to the date the asset was first put into use is not allowable as a deduction; instead, it must be capitalized with the cost of the asset and is eligible for depreciation.
- Capital and revenue expenditure may be deducted for research conducted in-house (this can rise to 200%) and for payments made for scientific research to specified companies or organizations or payments to a national government laboratory, certain educational institutions and certain approved research programs (this can rise to 200%).
- Investment-linked incentives (a 100% or 150% deduction for capital expenditure other than expenditure incurred on the acquisition of land, goodwill or financial instruments) are available for specified activities (e.g. setting up and operating certain cold chain facilities or warehousing facilities; laying and operating cross-country natural gas or crude or petroleum oil pipeline networks for distribution, including storage facilities that are an integral part of such networks; investing in housing projects under an affordable housing scheme; and operating a hospital with 100 beds).

- Incentives involving a deduction of 100% of profits for a specified period are available, subject to certain conditions, for certain business activities (e.g. those relating to generation or distribution of power; development of a SEZ; manufacture or production of eligible articles; and collection and processing or treatment of biodegradable waste, among others).
- A company engaged in the manufacture of goods in a factory and that employs new regular workers may qualify for a deduction of 30% of additional wages paid to new regular workers in the year of employment and in the following two years.
- An investment allowance is available in the form of a deduction of 15% of the cost of new plant or machinery to a company engaged in a manufacturing business. A deduction is available if the aggregate cost of plant or machinery acquired and installed from 1 April 2013 to 31 March 2015 exceeds INR 1 billion; a similar deduction is available from 1 April 2014 up to 31 March 2017 if the cost of plant or machinery acquired and installed in a year exceeds INR 250 million. The investment allowance is in addition to the deduction of the normal depreciation allowance in respect of the cost of such assets.
- Interest, royalties and fees for technical services paid outside India to overseas affiliates or in India to nonresidents may be deducted, provided tax is withheld.
- Payments to employees under voluntary retirement schemes may be deducted over five years. To encourage companies to employ additional workers, an amount equal to 30% of additional wages paid to new workers is allowed as a deduction for three years, subject to certain conditions.
- Securities transaction tax paid may be deducted.
- Business losses may offset income (see below).

Indian tax law does not permit companies to take a deduction for a general bad debt reserve, although specific bad debts may be deducted when written off. Expenses incurred for raising share capital are not deductible, as the expenditure is considered capital in nature. No deduction is allowed for expenditure incurred on income that is not taxable, or for payments incurred for purposes that are an offense or prohibited by law.

Amounts payable to nonresidents and subject to withholding are not deductible if the withholding tax is not deposited before the due date for filing the return. Expenses payable to a resident are disallowed to the extent of 30% of such expenses if the relevant withholding tax is not deposited before the due date for filing the return. Expenses subsequently will be allowed as a deduction in the year when withholding tax is deposited.

Certain items are deductible only when actually paid, including taxes, duties, cess, the employer’s contribution toward social security benefits for employees, certain interest payable to banks and financial institutions and leave encashment. No deduction is allowed for income taxes or interest thereon.

No deduction is allowed for expenses incurred for corporate social responsibility, except in certain cases. Amounts contributed to a charitable organization are deductible to the extent of 50% of the contribution, or 100% of the contribution if the company has positive taxable income.

Indian branches of foreign corporations may claim only limited tax deductions for general administrative expenses incurred by the foreign head office. These may not exceed 5% of annual income or the actual payment of head office expenditure attributable to the Indian business during the year (unless otherwise provided for in an applicable tax treaty), whichever is lower.

Depreciation

Asset depreciation usually is calculated according to the declining-balance method (except for assets of an undertaking engaged in the generation or generation and distribution of power, for which the straight-line method is optional). The depreciable base is based on actual cost, i.e. the purchase price plus capital additions, including certain installation expenses. If an asset is sold, discarded, demolished or destroyed, depreciation expense is reduced to the extent of the amount realized upon the sale, if any.

The depreciation rate on general plant and machinery is 15%. Subject to certain conditions, additional depreciation on new plant and machinery acquired on or after 1 April 2005 may be available at 20% of actual cost. Factory buildings may be depreciated at 10%; furniture and fittings at 10%; computers and software at 60%; specified energy-saving devices at 80%; and specified environmental protection equipment at 100%. Depreciation is allowed at 100% for buildings acquired after 1 September 2002 for the installation of a plant or machinery, but only for water supply projects or water treatment systems put to use as infrastructure facilities. Amortization is allowed at 25% on certain types of intangible assets such as know-how, patents, copyrights, trademarks, licenses, franchises or any business or commercial rights of a similar nature. Goodwill acquired in the course of an amalgamation also is treated as an intangible asset eligible for amortization, based on a ruling of the Indian Supreme Court.

Depreciation is calculated at 50% of the normal rates if an asset is used for less than 180 days in the first year. Depreciation allowances on buildings, machinery, factories and factory equipment or furniture are available on assets partially owned by a taxpayer. Unabsorbed depreciation may be carried forward indefinitely.

Capital assets purchased for scientific research may be written off in the year the expenditure is incurred. Preliminary outlays for project or feasibility reports (limited to 5% of the cost of the project or capital employed) may be amortized over five years from the commencement of business.

For succession in businesses and amalgamation of companies, depreciation is allowed to the predecessor and the successor, or the amalgamating and amalgamated company, based on the number of days each used the assets.

If an asset has been sold and leased back, the actual cost for computing the depreciation allowance is the written-down value to the seller at the time of transfer.

Losses

Losses arising from business operations in an assessment year may be set off against income from any source in that year. A business loss may be carried forward and set off against future business profits in the next eight assessment years. Closely held companies must satisfy a 51% “continuity of ownership” test to qualify for a business loss carryforward.

Losses may be carried forward only if the tax return is filed by the due date. However, unabsorbed depreciation can be carried forward indefinitely, even if the tax return is not filed by the due date. See under 3.4, below, for the treatment of capital losses.

Capital gains

See under 3.4, below.

Income from house property

This category applies to income from the letting out of property that is derived by a company in the business of letting out property or by a company that holds the property as an investment. The computation of income from house property normally is based on the annual value of the property, as reduced by a deduction equal to 30% of the annual value and a deduction for interest payable on capital borrowed in respect of the property. The annual value is the sum for which the property might reasonably be expected to be let out from year to year, and is reduced by taxes levied by any local authority in respect of the property.

Income from other sources

“Other income” is the residuary category under which income is taxable if not chargeable under any other specified head of income. The expenses wholly and exclusively incurred for the purpose of earning the income are deductible.

Dividends, interest and income from assets let on hire are taxable under this head if not chargeable as business income. Income from shares of a closely held company received by a firm or closely held company without consideration, or for consideration lower than fair market value, is taxable under this head. Advances received for transfer of a capital asset subsequently forfeited are taxable. Consideration received by a closely held company (other than a venture capital undertaking or company or other specified company) for an issue of shares in excess of the fair market value of the shares also is taxable under this head.

3.4 Capital gains taxation

Gains derived from the disposition of capital assets are subject to capital gains tax, with the tax treatment depending on whether the gains are long-term or short-term. Gains are considered long-term if the assets are held for more than 36 months. This period may be reduced to more than 12 months in the case of shares, specified securities/bonds and units of mutual funds, although as from 11 July 2014, the minimum holding period for long-term capital gains in respect of shares of a company that is not listed on a recognized stock exchange or units of a mutual fund is more than 36 months.

Short-term capital gains on listed shares and units of an equity-oriented mutual fund where STT is paid are taxed at a rate of 15% (plus the applicable surcharge and cess). Long-term capital gains (on listed shares and units of equity-oriented mutual funds held for at least one year) where STT is paid are exempt.

Listed units of a business trust traded on a stock exchange are liable to STT and subject to the same capital gains treatment as that of equity shares, i.e. long-term capital gains are exempt and short-term capital gains are taxable at the rate of 15%. If such units are traded outside a stock exchange (no STT paid), long-term capital gains will be taxable at 10% and short-term capital gains will be taxable at 30%.

Nonresidents pay capital gains tax on the sale of securities in an Indian company, based on the value of the securities in the foreign currency in which they were purchased. The capital gains are reconverted into rupees and taxed; no cost inflation index is applied.

Long-term capital gains of foreign institutional investors (FIIs) on listed shares and units of equity-oriented mutual funds where STT is paid are exempt, and short-term capital gains on such assets where STT is paid are taxed at 15% (plus the applicable surcharge and cess). Other long-term capital gains derived by FIIs (i.e. gains not arising from listed securities that are exempt as discussed above) are taxed at 10% (plus the applicable surcharge and cess). Other short-term capital gains derived by FIIs (i.e. gains not arising from listed securities referred to above) are taxed at 30%, plus the applicable surcharge and cess.

Other long-term capital gains derived by residents and nonresidents (i.e. gains not arising from listed securities that are exempt as discussed above) are taxed at 20% (plus the applicable surcharge and cess). In calculating long-term gains, the costs of acquiring and improving the capital asset are linked to a cost inflation index published by the government. The holder of an asset purchased before 1 April 1981 may use the fair market value of the asset on that date as the cost basis for computing the capital gain. This generally reduces tax liability.

Long-term capital gains of nonresidents on unlisted securities are taxed at 10% (plus the applicable surcharge and cess). The capital gains are computed without foreign currency conversion or cost indexation.

Other short-term capital gains derived by residents and nonresidents (i.e. gains not arising from listed securities referred to above) are taxed at normal rates (plus the applicable surcharge and cess).

Gains from the sale of long-term capital assets are exempt from capital gains tax if they are reinvested in certain securities within six months from the date of transfer and the investment (subject to an investment cap of INR 5 million) is locked in for three years.

Capital gains derived by an SPV sponsor on an exchange of shares in an SPV for units in a business trust are deferred until the disposal of such units in the business trust. On the disposal of such units, the cost of the shares in the SPV to the sponsor is treated as the cost of the units, and the sponsor's holding period in the shares is included in calculating the holding period for the units in the business trust.

Losses incurred on the transfer of short-term capital assets during an assessment year may be set off against capital gains (whether long-term or short-term) arising during the assessment year. The balance of losses, if any, may be carried forward to offset capital gains in the subsequent eight years. Long-term capital losses may be set off only against long-term capital gains during the year. The balance of losses, if any, may be carried forward for the subsequent eight assessment years to offset against long-term capital gains. Losses may be carried forward only if the tax return is filed by the due date.

3.5 Double taxation relief

Unilateral relief

A resident of India that derives income from a non-tax treaty country is eligible for a credit for the foreign income taxes paid. The credit is granted on a country-by-country basis and is limited to the lesser of the tax on income from the foreign country concerned or the foreign income tax paid on the income. Most of India's treaties grant relief from double taxation by the credit method or by a combination of the credit and exemption methods.

Tax treaties

India has a comprehensive tax treaty network in force with many countries. The treaties generally provide for relief from double taxation on all types of income, limit the taxation of nonresident companies and protect nonresident companies from discriminatory taxation in the country in which they are nonresident. India's treaties generally contain OECD-compliant exchange of information provisions. In addition, India has entered into agreements with specified associations for relief from double taxation, to limit the taxation of nonresident companies and to allow for the exchange of information and for recovery of income tax.

The Indian government also has the power to enter into a tax treaty with specified associations in a specified territory. There also are agreements limited to aircraft profits and shipping profits.

A nonresident taxpayer is required to furnish a tax residence certificate from the authorities in its country of residence, along with a new form (Form No. 10F), to obtain relief under a treaty. The taxpayer also may be required to furnish such other documents and information as may be prescribed to benefit from the treaty.

India Tax Treaty Network			
Albania	France	Mexico	South Africa
Armenia	Georgia	Moldova	Spain
Australia	Germany	Mongolia	Sri Lanka
Austria	Greece	Morocco	Sudan
Azerbaijan	Hungary	Mozambique	Sweden
Bangladesh	Iceland	Myanmar	Switzerland
Belarus	Indonesia	Namibia	Syria
Belgium	Ireland	Nepal	Taiwan
Bhutan	Israel	Netherlands	Tajikistan
Botswana	Italy	New Zealand	Tanzania
Brazil	Japan	Norway	Thailand
Bulgaria	Jordan	Oman	Trinidad & Tobago
Canada	Kazakhstan	Philippines	Turkey
China	Kenya	Poland	Turkmenistan
Colombia	Korea (ROK)	Portugal	Uganda
Cyprus	Kuwait	Qatar	Ukraine
Czech Republic	Kyrgyzstan	Romania	United Arab Emirates
Denmark	Latvia	Russia	United Kingdom
Egypt	Libya	Saudi Arabia	United States
Estonia	Lithuania	Serbia and Montenegro*	Uruguay
Ethiopia	Luxembourg	Singapore	Uzbekistan

Faroe Islands	Malaysia	Slovak Republic	Vietnam
Fiji	Malta	Slovenia	Zambia
Finland	Mauritius		

* Although Serbia and Montenegro ceased to exist in 2006, the treaty concluded between Serbia and Montenegro and India remains applicable in relations between Serbia and India. Montenegro has declared that it will honor all tax treaties that were concluded by Serbia and Montenegro, but India has not yet confirmed application of the treaty.

3.6 Anti-avoidance rules

Transfer pricing

As an anti-avoidance measure, India introduced comprehensive transfer pricing regulations into its tax laws in 2001. India's transfer pricing regulations are broadly based on the OECD guidelines, with some differences (and more stringent penalties). The regulations explicitly define the relations and the types of transactions that are covered for the purposes of transfer pricing. In addition to cross-border related party transactions, the regulations have been extended to cover the following domestic transactions:

- Expenditure (in respect of which a deduction is allowable when computing business income) where payment has been made to specified persons; and
- Transfers of goods or services from a unit claiming a tax holiday to another unit that may not be eligible for the tax holiday, and vice versa.

The regulations also contain deeming provisions that may cover transactions with unrelated parties, whether resident or nonresident, in certain circumstances.

The basic definition of the term "associated enterprise" is similar to that of the OECD model and is based on the generally accepted criterion of participation in control, management or capital. However, its scope is extended by including situations such as complete dependence on intellectual property, substantial participation in debt, extensive sourcing of raw materials by one enterprise from another enterprise, common control by any individual, etc.

Similarly, the definition of "international transaction" has been defined broadly, and includes, among others, any transaction that has a bearing on the profits, income, losses or assets of other associated enterprises. Transactions relating to cost contribution and cost allocation also are specifically covered, as are transactions in tangible as well as intangible property; capital financing, including a guarantee; and business restructurings or reorganizations with an associated enterprise, among others. Transactions between unrelated parties may be deemed to be international transactions under certain circumstances.

The arm's length principle is enforced by determining an arm's length price for an international transaction and allowing a deviation from that price in accordance with safe harbor rules enacted by the CBDT. Taxpayers must maintain contemporaneous documentation and obtain a certificate (in a prescribed format) from a chartered accountant furnishing the details of international transactions with associated enterprises, along with the methods used for benchmarking. The primary onus is on the taxpayer to establish that the price charged or paid in the course of international transactions complies with the arm's length principle. The regulations prescribe detailed documentation requirements, stringent penalty provisions and a procedure for audit of transfer pricing cases by specialized revenue officers known as transfer pricing officers. Where the application of the arm's length price would reduce the income chargeable to tax in India or increase the loss, no adjustment is made to the income or loss. If an adjustment is made to a company enjoying a tax holiday, the benefit of the holiday will be denied in relation to the adjustment made.

Transfer pricing audits have been more aggressive in recent times, leading to controversy and litigation. Several measures, such as the introduction of a dispute resolution panel, the advance pricing agreement (APA) with the tax authorities, additional resources to handle transfer pricing audits and an extension of the time to complete the audit have been introduced to reduce the burden of an audit on the tax officers and make the audit process more "reasonable" so that the results are evaluated according to the facts and circumstances of each taxpayer. As these have not been resulting in commensurate gain to revenue, safe harbor rules have been introduced to curb litigation and provide certainty to taxpayers. The safe harbor rules apply in certain specified sectors and provide for automatic acceptance of taxpayer's transfer price if the price is above specified amounts and the taxpayer submits an application in the prescribed form. A validly exercised safe harbor option may remain in force for up to five years, provided certain conditions are met.

A taxpayer may enter into an APA with the CBDT to determine an arm's length price or the manner of determination of an arm's length price. An APA is valid for five years and is legally binding on the taxpayer and on the tax authorities in respect of the international transaction for which it has been entered into, except where there is a change in law having a bearing on the APA. From 1 October 2014, an APA can be "rolled back" to cover up to four past years prior to the first year otherwise covered under the APA.

Thin capitalization

India does not have thin capitalization rules.

Controlled foreign companies

India does not have CFC rules, but these have been proposed.

General anti-avoidance rule

India currently does not have a GAAR. The 2015-16 budget proposes deferring the GAAR provisions, which were to be implemented as from 1 April 2015, to be effective as from 1 January 2017. The GAAR will empower the tax authorities to declare an arrangement an impermissible avoidance arrangement if it was entered into with the main purpose of obtaining a tax benefit, and (a) it creates rights or obligations that normally would not be created between persons dealing at arm's length; (b) it results, directly or indirectly, in the misuse or abuse of the Income Tax Act; (c) it lacks commercial substance or is deemed to lack commercial substance; and (d) it is carried out in a manner that would not be used for *bona fide* purposes. Once the GAAR is invoked, tax treaty benefits also may be denied for the arrangement.

3.7 Administration

Tax year

The tax year in India, known as the "previous year" (fiscal year), is the year beginning 1 April and ending 31 March. Income tax is levied for a previous year at the rates prescribed for that year. Income of a fiscal year is assessed to tax in the next fiscal year (i.e. the assessment year).

Filing and payment

Taxes on income of an assessment year usually are paid in installments by way of advance tax. A company must make a prepayment of its income tax liabilities by 15 June (15% of the total tax payable), 15 September (45%), 15 December (75%) and 15 March (100%). Any overpaid amount is refunded after submission of the final tax return.

A company must file a final tax return, reporting income of the previous year, by 30 September immediately following the end of the fiscal year, stating income, expenses, taxes paid and taxes due for the preceding tax year. A noncorporate taxpayer that is required to have its accounts audited also must file a return by 30 September. The due date for filing returns and transfer pricing accountants' reports is extended to 30 November for taxpayers with international transactions during the year. All other taxpayers must submit a return by 31 July. Guidance is issued annually for the selection of tax returns for scrutiny by the tax authorities. If the tax authorities can prove concealment of income, a 100%-300% penalty may be levied on the tax evaded.

All taxpayers are required to apply for a permanent account number (PAN) for purposes of identification. The PAN must be quoted on all tax returns and correspondence with the tax authorities and on all documents relating to certain transactions. Every recipient (whether resident or nonresident) of India-source income that is subject to withholding tax must furnish a PAN to the Indian payer before payment is made. Otherwise, tax must be withheld at a higher rate, irrespective of the rate provided under an applicable tax treaty.

Consolidated returns

No provision is made for group taxation or group treatment; each entity is taxed separately.

Statute of limitations

If a tax officer believes that income has escaped assessment, proceedings can be reopened within seven years from the end of the financial year in which the income escaping audit exceeds INR 0.1 million. However, the proceedings can be reopened only within five years if the tax officer has conducted an audit and assessed income and the taxpayer has submitted a return and fully disclosed all material facts necessary for assessment. Further, the proceedings can be reopened within 17 years from the end of the financial year if the income in relation to any asset (including a financial interest in any entity) located outside India has escaped assessment. There is no limitation period for the authorities to collect tax once an audit is completed and a demand for tax is made.

Tax authorities

The CBDT is the body that is responsible for providing essential input for policy and planning of direct taxes in India and for administration of direct tax laws through subordinate income tax authorities.

Rulings

The Authority for Advance Rulings (AAR) issues rulings on the tax consequences of transactions or proposed transactions with nonresidents. From 1 October 2014, the AAR also may issue rulings in relation to the tax liability of residents in prescribed cases. From 1 April 2015, the AAR may issue rulings on whether an arrangement is an impermissible avoidance agreement. Rulings are binding on the applicant and the tax authorities for the specific transaction(s).

As stated above, the taxpayer may enter into an APA with the CBDT to determine the arm’s length price or the manner of determination of the arm’s length price.

3.8 Other taxes on business

Wealth tax

Wealth tax is levied on specified assets and on specified categories of persons (including both companies and individuals) on specified assets exceeding INR 3 million. The wealth tax is 1% on the aggregate value of specified assets (net of debt secured on, or incurred in relation to, the assets).

4.0 Withholding taxes

4.1 Dividends

India does not levy withholding tax on dividends. However, the company paying the dividends is subject to DDT at a rate of 15% (plus a surcharge of 10% and a cess of 3%). From 1 October 2014, DDT payable must be grossed and calculated as 15% of the aggregate dividend declared, distributed or paid, including the DDT.

4.2 Interest

Interest paid to a nonresident on a foreign currency borrowing or debt generally is subject to a 20% withholding tax, plus the applicable surcharge and cess. Thus, the effective withholding rate is 20.6% (where total income is less than or equal to INR 10 million), 21.01% (where total income exceeds INR 10 million but is less than 100 million) or 21.63% (where total income exceeds INR 100 million). Interest income received by a business trust from an SPV is subject to a 5% withholding tax, plus the applicable surcharge and cess, when distributed onward to the business trust's nonresident unitholders. Interest paid to a nonresident on specified borrowings in foreign currency is subject to a 5% withholding tax, plus the applicable surcharge and cess, if the money is borrowed under a loan agreement or by issue of a long-term bond, including a long-term infrastructure bond as approved by the central government, and the funds are borrowed between 1 July 2012 and 31 July 2017. If the interest income derived by a nonresident does not fulfill certain prescribed conditions for concessional withholding tax rates, a withholding tax rate of 30% (for individuals and entities other than a foreign company) or 40% (for a foreign company), plus the applicable surcharge and cess, will apply. The rates may be reduced under a tax treaty.

4.3 Royalties

The withholding tax on royalties and fees for technical services paid to a nonresident is 25%, plus the applicable surcharge and cess, unless reduced by a treaty. Thus, the effective withholding rate is 25.75% (where total income is less than or equal to INR 10 million), 26.27% (where total income exceeds INR 10 million but is less than 100 million) or 27.04% (where total income exceeds INR 100 million).

4.4 Branch remittance tax

India does not levy a branch remittance tax.

4.5 Wage tax/social security contributions

There are no wage taxes. Both the employer and the employee are required to contribute to social security: the employer and the employee each contribute 12% of the employee's salary to the employee provident fund. Further, the employer is required to contribute 4.75% of the employee's salary to the state insurance scheme. The employee's contribution to the state insurance scheme is 1.75% of his/her salary.

4.6 Other

Contractor's tax

Payers must withhold tax at a rate of 40%, plus a surcharge of 2% (if payment exceeds INR 10 million) and cess of 3% from payments to nonresident contractor companies. Payers must withhold at 30%, plus a surcharge of 2% (if the payment exceeds INR 10 million) and cess of 3% in the case of nonresident, noncorporate contractors. An application may be submitted to the tax authorities to benefit from a lower rate or an exemption.

Purchase of immovable property

The transferee of any immovable property (other than agricultural land) must withhold tax at a rate of 1%, plus the applicable surcharge and cess, on the consideration for the transfer if this consideration is equal to or in excess of INR 5 million.

5.0 Indirect taxes

5.1 Value added tax

All Indian states, including union territories, have moved to a VAT regime—a broad-based "consumption-type destination-based VAT" based on the invoice tax credit method that applies to most types of movable goods and specified intangible goods, barring a few exempted goods that vary from state to state. The tax paid on specified inputs procured within any state involved in the manufacturing of goods for sale within the state or for interstate sale and the input tax on specified goods purchased within the state by a trader (in both cases from registered dealers) are available as VAT credits, which may be adjusted against the tax on output sales within the state or the tax on interstate sales.

The standard VAT rate in the various states ranges from 12.5% to 15%, depending on the state, with reduced rates of 5% and 1% in most states. The reduced rates apply to the sale of agricultural and industrial inputs, capital goods and medicines, precious metals, etc.

Export outside India is not liable to VAT and a refund of the input tax is available for exporters.

Registration is compulsory for businesses exceeding a certain annual turnover (INR 500,000 in most states), although certain state VAT laws also specify monetary limits of sales and/or purchases. VAT returns and payments generally are due either monthly or quarterly, based on the amount of the tax liability. VAT is payable by the seller; however, the seller can collect the same from the invoice to the customer.

5.2 Capital tax

India does not levy capital duty, although a registration duty is levied.

5.3 Real estate tax

Owners of real estate are liable to various taxes imposed by the state and municipal authorities. These taxes vary from state to state.

5.4 Transfer tax

STT is levied on the purchase or sale of an equity share, derivative or unit of an equity-oriented fund entered in a recognized stock exchange in India at the following rates:

- 0.025% paid by the seller on the sale of an equity share that is nondelivery-based;
- 0.017% paid by the seller on the sale of an option and futures in securities;
- 0.25% paid by the seller on the sale of a unit of an equity-oriented fund and on the sale of a unit of an equity-oriented fund to the mutual fund;
- 0.125% paid by the buyer on the sale of an option in securities, where the option is exercised;
- 0.125% each paid by the buyer/seller on the purchase/sale of an equity share or unit of an equity-oriented fund that is delivery-based; and
- 0.2% paid by the seller on the sale of unlisted shares under an offer for sale to the public in an initial public offer.

STT paid in respect of taxable securities transactions entered into in the course of business is allowed as a deduction if income from the transactions is included in business income.

5.5 Stamp duty

Stamp duty is levied on instruments recording certain transactions, at rates depending on the nature of instrument and whether the instrument is to be stamped under the Indian Stamp Act, 1899 or under a state stamp law. Stamp duty rates for an instrument vary from state to state.

5.6 Customs and excise duties

Customs duties are levied by the central government, generally on the import of goods into India, although certain exported goods also are liable to customs duties. The basis of valuation in respect of imports and exports is the transaction value, except where the value is not available or has to be established because of the relationship between the parties.

The rate of basic customs duty is 10%. However, the aggregate customs duty, including additional duties and the education cess, is 28.85%. Several products attract the basic customs duty of 7.5%, which works out to an effective duty of 25.85%. The rates vary depending on the classification of the goods under the Customs Tariff Act, 1975. Safeguard and anti-dumping duties also are levied on specified goods. The clearance of goods from customs is based on self-assessment of bills of entries for imports. Imports from related parties are subject to assessment by the Special Valuation Branch to ensure that the imports are made at an arm's length price.

5.7 Environmental taxes

None

5.8 Other taxes

Central sales tax

The central government levies a CST on the interstate movement of goods, but the tax is collected and retained by the origin state. CST is levied at a rate of 2% on the movement of such goods from one state to another, provided specified forms are submitted. Failure to submit the specified forms results in CST being charged at the applicable local rate of the state. Registration is compulsory for all dealers engaging in interstate sales or purchase transactions liable to CST. CST returns and payments are due monthly or quarterly, based on the period applicable for filing the return/payment of tax in the state in which CST is required to be paid. CST is payable by seller; however, the seller can collect the same from the invoice to the customer.

CST paid on interstate purchases is not allowed as a set off or as a credit against the VAT/CST payable in any state. Stock transfers of goods between states also are subject to reversal (surrendering) of the input tax credit, up to specified percentages (ranging from 2% to 4% of the purchase value of the respective goods) in the state from which the goods are stock transferred.

Further, interstate sales to a unit in or a developer of a SEZ are not liable to CST. However, a refund or credit of input VAT is available to exporters and suppliers to a SEZ.

Export sales and sales immediately preceding an export sale are not liable to CST. Sales occasioning the import of goods into India and high-seas sales of goods are not liable to CST.

Service tax

Service tax is levied at 12.36% (including cess) on the value of all services other than those services that appear on a negative list or that are specifically exempted. Service providers having an aggregate value of taxable services up to INR 1 million are outside the scope of service tax, subject to certain conditions.

The receipt basis for determining the point of taxation has been replaced in favor of a rule based on an accrual system of accounting. Credit is available for excise duty suffered on inputs and capital goods and for service tax on input services used in the provision of taxable output services, subject to specific conditions. Trading and partially taxed services, however, are exempted from service tax, so no set off or refund of tax paid on procurement is available.

Further, services wholly used in an SEZ are exempted. However, where services are not wholly consumed in an SEZ, refund of input tax is available to an SEZ unit or a developer in the manner prescribed.

Export of services outside India is not liable to service tax. However, a refund or credit for excise duty on inputs and capital goods and for tax on input services is available to exporters.

Tax generally is payable by the service provider, except under specified circumstances where the tax is payable by the service recipient in India (e.g. on the import of services from outside India). Service tax payments are to be made on a monthly basis, and returns are to be filed biannually.

Central excise duty

A central excise duty is levied by the central government on the production or manufacture of goods in India. Liability for paying the duty is on the producer or manufacturer. Excise duty payments and returns are due monthly. Duty rates are based on the transaction value, except where such value is not available or has to be otherwise established or where duty is payable based on the retail sales price (in case of consumer goods). The standard excise duty rate is 12.36%, including cess. The rates vary depending on the classification of goods under the Central Excise Tariff Act, 1985. Credit for excise duty suffered on inputs and capital goods and for service tax on input services used in the production of excisable goods is available, subject to specific conditions.

Export of goods outside India is not liable to excise duty. However, a refund or credit for excise duty on inputs and capital goods, and for tax on input services, is available to exporters.

R&D cess

The R&D Cess Act (1986) provides for a cess of 5% on payments made for the import of "technology." A credit mechanism to offset the cess may be available in certain situations, upon the fulfillment of certain requirements.

Proposed goods and services tax
The Indian government has proposed introducing a comprehensive GST involving a single taxable event of "supply," instead of the present regime involving multiple taxes on multiple taxable events. The GST is expected to be introduced from 1 April 2016, While a bill to amend the India's constitution to facilitate introduction of the GST is pending before parliament, the government has released preliminary discussion papers that indicate that, due to the federal structure of the Indian economy, there would be a dual GST, i.e. (1) central GST (CGST) levied by the central government to replace, *inter alia*, excise duty and service tax; and (2) state GST (SGST) levied by the state government to replace, *inter alia*, VAT, entry tax, entertainment tax, luxury tax, etc. The CGST and SGST would operate concurrently on every taxable transaction involving the supply of goods and/or services, with minimum tax exemptions and reliefs. A comprehensive rate of 16% GST would be achieved, in a phased manner, by the third year of implementation.

6.0 Taxes on individuals

India Quick Tax Facts for Individuals	
Income tax rates	Progressive to 30%, plus surcharge of 10% if income is above INR 10 million and cess of 3% on tax and surcharge
AMT rate	18.5%, plus the surcharge and cess, on adjusted total income in excess of INR 2 million
Capital gains tax rates	10%-30%, exempt in certain cases
Basis	Worldwide income for "resident and ordinarily resident" individuals
Double taxation relief	Yes
Tax year	1 April–31 March
Return due date	31 July/30 September/30 November
Withholding tax	
– Dividends	No
– Interest	10% (residents)/5%/20%/30% (nonresidents), plus surcharge and cess
– Royalties	10% (residents)/25% (nonresidents), plus surcharge and cess
Net wealth tax	1% on wealth in excess of INR 3 million
Social security	12% each by employer and employee
Inheritance tax	No
Gift tax	No, but income tax is payable by the gift recipient in specified cases
Real estate tax	Varies
Customs duty, excise duty, VAT and service tax	See under India Quick Tax Facts for Companies

6.1 Residence

The extent of an individual's liability for personal income tax depends on whether the individual is resident and ordinarily resident, resident but not ordinarily resident or nonresident in India.

For tax purposes, an individual is resident in India if he/she is physically present for at least 182 days in the country in a given year, or 60 days in a given year and 365 days or more in the preceding four years. Individuals not satisfying the above condition will be nonresidents for that year. For Indian citizens leaving India for employment or as members of the crew of an Indian ship and for Indian citizens/persons of Indian origin working abroad who visit India while on vacation, the threshold is 182 days in the relevant year instead of 60 days.

A "not ordinarily resident" individual is a person who either has not been a resident in nine out of the 10 preceding years, or who has been in India for 729 days or less during the preceding seven years. As a result, expatriate managers who have lived in India continuously for two years may be liable to tax on their worldwide income in the third or fourth year.

6.2 Taxable income and rates

Personal income tax is levied on only about 3.5% of India's more than one billion citizens. The states levy profession tax on salaried employees and persons carrying on a profession or trade at rates that vary by state.

Taxable income

An individual's income is categorized into different heads of income:

- Employment income;
- Business or professional income;
- Income from real estate;
- Capital gains; and
- Other income.

Ordinary residents of India are taxed on worldwide income. Persons not ordinarily resident generally do not pay tax on income earned outside India unless it is derived from a business/profession controlled in India, or the income is accrued or first received in India or is deemed to have accrued in India (subject to certain exceptions).

Nonresidents are liable to tax on India-source income, including the following: (1) interest, royalties and fees for technical services paid by an Indian resident subject to certain exceptions; (2) salaries paid for services rendered in India; and (3) income that arises from a business connection or property in India. They also are liable to tax on any income first received in India.

Expatriates

Remuneration received by foreign expatriates working in India generally is assessable under the head "salaries" and is deemed to be earned in India. Income payable for a leave period that is preceded and succeeded by services rendered in India and that forms part of the service contract also is regarded as income earned in India. Thus, irrespective of the residence status of an expatriate employee, the salary paid for services rendered in India is liable to tax in India.

There are no special exemptions or deductions available to foreign nationals working in India. However, a foreign national who comes to India on short-term business visits can claim an exemption under the domestic tax law or a relevant tax treaty. Nonresident individuals desirous of availing treaty benefits need to obtain a tax residency certificate from the country where they are tax residents and generally must furnish this certificate along with a new form (Form No. 10F) to obtain treaty benefits.

Where salary is payable in foreign currency, the salary income must be converted to Indian rupees. For this purpose, the rate of conversion to be applied is the telegraphic transfer-buying rate as adopted by the State Bank of India on the last day of the month immediately preceding the month in which the salary is due or paid. However, if tax is to be withheld on such an amount, the tax withheld is calculated after converting the salary payable into Indian currency at the rate applicable on the date tax was required to be withheld, i.e. the date of payment.

Value of benefits

The government has laid down valuation rules for determining the taxable value of the benefits provided to an employee:

- Rent-free accommodation: Specified percentage of the employee's salary, depending on the city where the accommodation is located.
- Use of movable assets of employer: 10% per annum of the actual cost of the assets, or the amount of rent paid by the employer if the assets are leased (the use of computers and laptops is not treated as a perquisite).
- Interest-free/concessional loans exceeding INR 20,000: Interest computed at the annual rate charged by the State Bank of India.

- Other benefits: The taxable perquisites value will be computed per the prescribed valuation rules.
- Approved superannuation fund: A contribution in excess of INR 100,000 is taxable.
- Medical reimbursements: Exempt up to INR 15,000 per annum.
- Voluntary retirement schemes: Exempt up to INR 500,000 on satisfaction of specified conditions.

Deductions and reliefs

Standard deductions are not allowed. Allowed deductions include contributions to life insurance; recognized provident funds; national savings certificates; the national savings scheme; subscriptions to certain mutual funds; deposits made under the Senior Citizen Savings Scheme Rules (2004); five-year time deposits under the Post Office Time Deposit Rules (1981); certain education expenses up to INR 150,000; interest on loans for higher education (self, spouse and children), without limit; mortgage interest up to INR 200,000 annually on home loans obtained on or after 1 April 1999, if the borrower resides in the home; and royalties received by authors of literary, artistic and scientific books and for income from the exploitation of patents of up to INR 300,000. An additional deduction of INR 20,000 is allowed for investments in infrastructure bonds. A deduction up to INR 15,000 is allowed for health insurance premiums. Additionally, INR 15,000 (INR 20,000 for senior citizens) is allowed for health insurance premiums paid for dependent parents.

Rates

The personal income tax is imposed at progressive rates of up to 30% (plus surcharge of 10% payable if the income exceeds INR 10 million, and an education cess of 3% that is levied on the tax and surcharge payable). A general exemption from tax and filing obligations applies for those with an income of less than INR 250,000 (INR 300,000 for resident senior citizens). “Senior citizens” refer to individuals whose age is 60 years or more. The “very senior citizen” category introduced in 2012 to cover individuals who are 80 years and above continues. The basic exemption limit for this category is INR 500,000.

A tax rebate of INR 2,000 is allowed for individuals with taxable income up to INR 500,000.

The current tax brackets are: the 10% bracket (exclusive of surcharge and cess) for income from INR 250,001 to INR 500,000; the 20% bracket (exclusive of surcharge and cess) for income from INR 500,001 to INR 1,000,000 and the 30% bracket (exclusive of surcharge and cess) for amounts in excess of INR 1,000,000. A surcharge of 10% on the tax is levied if income exceeds INR 10 million, subject to applicable marginal relief. In addition, a cess of 3% is levied on tax and surcharge.

AMT is imposed on individuals, associations of persons and bodies of individuals with adjusted total income exceeding INR 2 million. The rate is 18.5%, further increased by the applicable surcharge and cess. Tax paid under the AMT provisions may be carried forward for set off against income tax payable in the next 10 years, subject to certain conditions.

6.3 Inheritance and gift tax

India does not levy inheritance or gift tax. However under the Income-tax Act and, subject to certain exceptions, where an individual or a Hindu Undivided Family (HUF) receives any sum of money or immovable property (in excess of INR 50,000) without providing consideration (or provides inadequate consideration) in exchange, such person is liable to tax on the value of the property (or on the difference between the value of the property and the inadequate consideration provided).

6.4 Net wealth tax

All individuals and other specified persons must pay a 1% wealth tax on the aggregate value of net wealth exceeding INR 3 million of nonproductive assets, such as land; buildings not used as factories; commercial property not used for business or a profession; residential accommodation for employees earning over INR 1 million per annum; gold, silver, platinum and other precious metals, gems and ornaments; and cars, aircraft and yachts.

6.5 Real property tax

Municipalities levy property taxes (based on assessed value) and states levy land-revenue taxes.

6.6 Social security contributions

Both the employer and the employee are required to contribute to social security. The employee contributes 12% of his/her salary to the employee provident fund and 1.75% to the state insurance scheme.

6.7 Other taxes

None

6.8 Compliance

All taxpayers are required to apply for a permanent account number (PAN) for purposes of identification. The PAN must be quoted on all tax returns and correspondence with the tax authorities and on all documents relating to certain transactions. Every recipient (whether resident or nonresident) of India-source income subject to withholding tax must furnish a PAN to the Indian payer before payment is made. Otherwise, tax will have to be withheld at a higher rate, as prescribed.

Each taxpayer must file a return; the concept of joint filing does not exist in India.

Individuals must file an income tax return electronically showing their total income in the previous year if that income exceeds INR 0.5 million.

An individual that is required to have his/her accounts audited must file a return by 30 September immediately following the end of the fiscal year. An individual that is required to submit a transfer pricing accountant's report must file a return by 30 November immediately following the end of the fiscal year. All other individuals must file a return by 31 July immediately following the end of the fiscal year.

7.0 Labor environment

7.1 Employee rights and remuneration

India's labor laws are complex, with more than 60 pieces of relevant legislation. Employers face particular difficulties in terminating employment and closing an industrial establishment.

Working hours

The Factories Act, 1948 requires maximum working hours of 48 hours per week. In practice, office employees normally work a five-day week of 40-45 hours. Factory workers have on average a six-day week of 48 hours. Any work beyond nine hours per day or 48 hours per week requires payment of overtime at double the normal wage.

Maternity leave of 12 weeks is provided under the Maternity Benefit Act, 1961.

The Industrial Employment (Standing Orders) Act, 1946 requires industrial establishments with 100 (number may vary by state) or more employees to establish standing orders that specify working conditions (hours, shifts, annual leave, sick pay, termination rules, etc.). These orders must meet minimum state standards and may be changed only with the consent of the workers or the trade unions, and only to augment benefits.

7.2 Wages and benefits

Wages and fringe benefits vary considerably depending on the industry, company size and region. The floor-level minimum wage is INR 115 per day and may be higher in certain industries. Wages generally have two components: the basic salary and the "dearness" allowance, which is linked to the cost-of-living index. The allowance, paid as part of the monthly salary, may be at a flat rate or on a scale graduated by income group. A mandatory bonus supplements wages.

Companies use both time and piece rates. The former is more common in organized factory industries, such as engineering, chemicals, cement, paper, etc. Rates may be per hour, day, week or month. Piece rates, which the government has encouraged to boost productivity, are usually paid monthly, although casual workers are paid on a daily basis. Some industries pay production premiums.

In the organized sector, wages often are set by settlements reached between trade unions and management. Statutory benefits, such as provident funds, pensions and bonuses, normally add 30%-42% to the base pay.

The Payment of Bonus Act, 1965 requires all employers covered under the statute to pay a bonus to their employees. The Act applies to factories with 10 or more workers and other establishments with 20 or more employees.

A bonus must be paid to all employees who earn a salary or wage up to INR 10,000 per month and who have worked for at least 30 days during the year. The minimum amount of bonus is 8.33% of salary or wages or INR 100 per annum, whichever is higher. The maximum bonus payable is 20% of salary or wage per annum.

Pensions

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for provident funds and pension contributions for certain establishments with 20 or more employees. In practice, several industries are covered under the provident fund laws. Employers and employees contribute 10% or 12% (depending upon the type of industry) of wages (i.e. basic wages, dearness allowance, retaining allowance and cash value of food concession) per month. From the employer's contribution, an amount up to INR 6,500 per annum (8.33% of wages) goes towards the pension fund and the balance towards the provident fund (except in the case of "international workers," where the pension contribution by the employer is 8.33% of the wages). Employees contribute only to the provident fund (12% of monthly salary).

Exemption from such contributions is provided to expatriates from countries that have concluded a social security agreement with India (currently Belgium, Germany, Switzerland, Luxembourg, Denmark, France, Korea, Netherlands, Hungary, Sweden and Finland).

The government created the National Pension Scheme (NPS) to promote small savings that would result in annuities for old age. This is a voluntary scheme open to all citizens of India in the age group of 18-60 years. Contributions to the NPS are tax deductible, subject to specified conditions and limits.

Health insurance

The Employee's Compensation Act, 1923 provides compensation for industrial accidents and occupational diseases resulting in disability and death. The minimum compensation payable by the employer is INR 120,000 for death and INR 140,000 for permanent total disability. The maximum is INR 914,160 for death and INR 1,096,992 for total disability.

The Act, which applies to factories that employ at least 10 persons, provides health insurance for industrial workers, for which employers contribute 4.75% of an employee's wages and employees contribute 1.75% on a monthly basis.

Other benefits

Share options are common in the information technology, biotechnology, media and telecom sectors, and for banks. SEBI has issued the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines (1999), which are applicable to listed companies. Companies are permitted to freely price the stock options, but must book the accounting value of options in their financial statements. The guidelines specify, among other things, a one-year lock-in period, approval of shareholders by special resolution, formation of a compensation committee, accounting policies and disclosure in directors' reports.

The Payment of Gratuity Act, 1972 requires employers to pay a gratuity to workers who have rendered continuous service for at least five years at the time of retirement, resignation or superannuation, at the rate of 15 days' wages for every completed year of service or part thereof in excess of six months, up to a maximum of INR 1 million. The gratuity is payable at the same rate in cases of death or disablement of workers, even if the worker has not completed five years of continuous service.

7.3 Termination of employment

The Industrial Disputes Act, 1947 requires industrial establishments with 100 (the number may vary by state) or more employees to obtain government permission to close an operation. Employers must apply for permission at least 90 days before the intended closing date. If the government does not issue a decision within 60 days of the application, approval is deemed to be granted. An employer can apply to the relevant government agency to review its decision, or appeal to the Industrial Tribunal. Workers in an establishment closed illegally (i.e. without approval) remain entitled to full pay and benefits. The employer may appeal against the labor court or tribunal order to a higher court, and during the appeal process the reinstated worker remains entitled to 100% of wages.

Companies may use voluntary retirement schemes (VRSs) or redeployments. Beneficiaries under an approved VRS are exempt from tax on monetary benefits up to INR 500,000. Companies may amortize their VRS expenses over five years under the tax law.

7.4 Labor-management relations

With some exceptions, India has company unions rather than trade unions. These often are affiliated with national labor organizations. Various trade unions are promoted by political parties.

In manufacturing and other companies, prior discussions between management and labor leaders often help to forestall strikes. When strikes or disputes occur, they usually are settled by negotiation or through conciliation boards. It is common practice in many foreign-owned manufacturing companies to avert strikes by employing a labor welfare officer to act as a go-between for labor and management. By law, manufacturing companies with 500 or more workers must have one or more welfare officers who act as personnel managers and legal advisers on labor law and promote relations between factory management and workers. In nonunionized companies in certain states, workers' representatives may be appointed to represent the workers.

The Industrial Disputes Act, 1947 requires industrial establishments with 100 or more workers to set up works committees consisting of representatives of employers and workers to promote measures for securing and preserving amity and good relations between the employer and the workforce.

Collective bargaining has gained ground in recent years, but agreements normally apply only at the plant level. Collective agreements are the norm in banking; such pacts may last up to five years.

At the central level, labor policies are managed jointly by the Indian Labor Conference and its executive body, the Standing Labor Committee, along with the various industrial committees. Representatives from the government, employers and labor are included in all three groups.

7.5 Employment of foreigners

Expatriate employment in manufacturing industries generally is limited to technical and specialized personnel. Many foreign affiliates have a few expatriates in India. Permission from the RBI or the government is not required to employ a foreign national, but the Ministry of Home Affairs, which grants visas and certain specific appointments, may require government approval in some cases. Foreigners entering India on a student, employment, research or missionary visa that is valid for more than 180 days are required to register with the Foreigners Registration Officer under whose jurisdiction they propose to stay within 14 days of arrival in India, irrespective of their actual period of stay. Foreigners visiting India on any other category of long-term visa valid for more than 180 days are required to register with the Foreigners Registration Officer within 14 days.

It normally takes about three months to obtain an immigration visa. The visa generally is granted for the same period as the employment contract. Once it is obtained, a stay permit is granted; this must be endorsed annually by the state government where the foreign national resides.

Expatriates are often paid salaries several times more than those of their Indian counterparts. Domestic private sector salaries are rising quickly, although they vary widely among industries.

The Ministry of Commerce and Industry has issued guidance clarifying that foreign nationals coming to India to execute projects or contracts are not covered under business visas and require employment visas. E-visa applications of foreign nationals working in India will be processed by the Indian missions abroad and will not be subjected to any quota restrictions. However, foreign nationals will have to draw a salary in excess of USD 25,000 to be eligible for an E-visa.

8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

Connect to the source and discover:

A database that allows users to view and compare tax information for 65 jurisdictions that includes –

- Corporate income tax rates;
- Historical corporate rates;
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- In-force and pending tax treaty withholding rates on dividends, interest and royalties;
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Guides and Highlights – Deloitte's Taxation and Investment Guides analyze the investment climate, operating conditions and tax systems of most major trading jurisdictions, while the companion Highlights series concisely summarizes the tax regimes of over 130 jurisdictions.

Jurisdiction-specific pages – These pages link to relevant DITS content for a particular jurisdiction (including domestic rates, tax treaty rates, holding company and transfer pricing information, Taxation and Investment Guides and Highlights).

Tax publications – Global tax alerts and newsletters provide regular and timely updates and analysis on significant cross-border tax legislative, regulatory and judicial issues.

Tax resources – Our suite of tax resources includes annotated, ready-to-print versions of holding company and transfer pricing matrices; a summary of controlled foreign company regimes for the DITS countries; an R&D incentive matrix; monthly treaty updates; and expanded coverage of VAT/GST/sales tax rates.

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DITS is free, easy to use and readily available!

http://www.dits.deloitte.com

9.0 Office locations

To find out how our professionals can help you in your part of the world, please contact us at the offices listed below or through the "contact us" link at **http://www.deloitte.com/tax.**

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