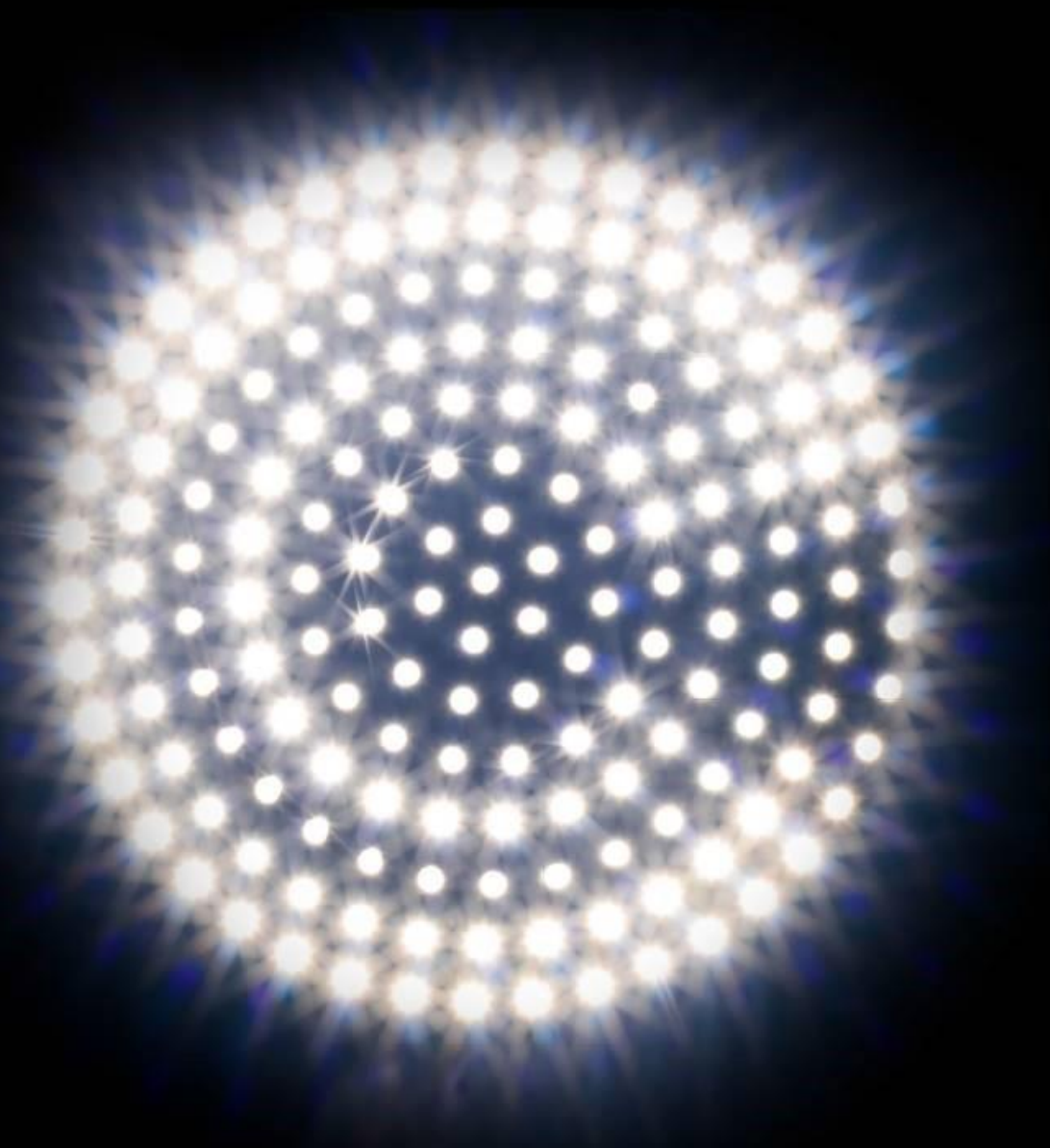


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**Taxation and Investment
in India 2018**

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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 Lok Sabha. The states and union territories are governed by independently elected governments.

India has a three-tier economy, comprising agricultural, manufacturing and services sectors.

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. Significant changes in the FDI policy have been made, including the introduction of composite caps across sectors to attract foreign investment and liberalization in the FDI policy in relation to sectors engaged in defense, brownfield pharmaceuticals, broadcasting carriage services and cable networks, civil aviation, private security agencies, single brand retail and other financial services.

With an view to making India an international financial center, the government has issued guidelines for International Financial Services Centers (IFSCs): jurisdictions that provide financial services to nonresidents and residents (to the extent permissible) under the current regulations. The first IFSC was set up at Gujarat International Finance Tec-City (GIFT City). IFSCs aim to attract domestic and international financial/information technology/information technology-enabled service providers, to make India a global financial hub with state-of-the-art infrastructure.

The government is placing emphasis on various programs to make India an attractive hub for manufacturing and attract global investments. The "Make in India" program is one such initiative, through which several defense sector contracts have been negotiated that should result in the establishment of manufacturing facilities in India. The Make in India initiative is supported by the "Skill India" initiative, which has the objective of providing training to a large workforce relevant to gainful employment in their chosen fields and supporting industry requirements for a skilled workforce.

India is facilitating start-up activities by providing seed capital on "soft" conditions to start-ups. To promote entrepreneurship at a grassroots level, the "Stand-Up India" scheme has been launched and seeks to leverage the institutional credit structure to reach out to underserved sectors of the population, including female entrepreneurs. Other schemes include Smart Cities, Digital India, Swachh Bharat Abhiyaan and PowerTex India. These schemes have opened up multifaceted opportunities for multinational corporations, such as financial institutions, private equity firms, equipment suppliers, contractors and consultants.

According to the World Bank's *Doing Business 2017* report, India ranks 130th out of 190 countries in the ease of doing business. The government aims to be ranked among the top 50, and has taken many initiatives to improve the ease of doing business in India by speeding up company formation, operationalizing the "e-BIZ" portal where a business user can fill out electronic forms for processing by the relevant government department and taking measures to reduce the time necessary for liquidation of a company.

India is a prominent member of various international organizations, including the United Nations; Asian Development Bank; South Asian Association for Regional Cooperation (SAARC); G20 industrial nations; the Brazil, Russia, India and China (BRIC) countries, etc. Although the country is not a member of the OECD, it is an enhanced engagement country that contributes to the OECD's work in a sustained and comprehensive manner.

OECD member countries

Australia	Hungary	Norway
Austria	Iceland	Poland
Belgium	Ireland	Portugal
Canada	Israel	Slovakia
Chile	Italy	Slovenia
Czech Republic	Japan	Spain
Denmark	Korea (ROK)	Sweden
Estonia	Latvia	Switzerland
Finland	Luxembourg	Turkey
France	Mexico	United Kingdom
Germany	Netherlands	United States
Greece	New Zealand	

Enhanced engagement countries

Brazil	India	South Africa
China	Indonesia	

OECD accession candidate countries

Colombia	Costa Rica	Lithuania
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India has concluded a number of bilateral and regional trade agreements with key trading partners, to foster broader economic cooperation.

India has joined the Paris Climate Change Agreement, which requires all countries that ratify it to come up with a national plan to limit global temperature rise.

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, plant varieties, trade secrets, traditional knowledge and traditional cultural expression, semiconductor circuits 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 not only for goods, but also for services. The act provides for simplified procedures for registration. The duration of a registered trademark is 10 years, which may be further extended by 10 years upon making an application.

Copyrights are protected for literary, dramatic, musical, artistic and film works, sound recordings, computer software, etc. under the Copyright Act, 1957. 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. India also participates in the Madrid Agreement on Trademarks, the Berne Convention for the protection of literary and artistic works, the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled, the Budapest Treaty on the international recognition of the deposit of microorganisms for the purposes of patent procedure, etc.

As a member of the WTO, India has enacted the Geographical Indications of Goods (Registration & Protection) Act (1999). This act provides for registration and better protection of geographical indications relating to goods.

1.2 Currency

The currency is the Indian rupee (INR).

With a view to rooting illicit cash out of the system and curbing the financing of terrorism through fake Indian currency notes and the use of such funds for subversive activities such as espionage and smuggling of arms, drugs and other contraband into India, the former high-denomination bank notes of INR 500 and INR 1,000 ceased to be legal tender from 9 November 2016 and were required to be deposited or exchanged by 30 December 2016. The Reserve Bank of India (RBI) has issued a new series of bank notes of INR 50, INR 200, INR 500 and INR 2,000 denominations.

1.3 Banking and financing

India's central bank is the RBI, which is the supervisory authority for all banking operations in the country. The RBI, established under an act of 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 government has formed the Monetary Policy Committee (MPC) of the RBI, headed by its governor, which will assist the RBI in formulating, implementing and monitoring the monetary policy. It is responsible for regulating non-banking financial companies (NBFCs), 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). Recently, many small finance banks and payment banks have been set-up. Small finance banks aim to 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.

The RBI has released guidelines for licensing new universal private sector banks. The final guidelines provide explicit policy on the structure of new private sector banks and outline the application and selection process. Stringent rules govern the operations of systemically important non-deposit-taking, non-banking financial services companies, such as those with assets of INR 5 billion or more, to reduce the scope of regulatory arbitrage *vis-à-vis* a bank.

FDI in "other financial services" is permitted under the automatic route (see under 1.4, below) if such services are regulated by any financial sector regulator, e.g. the RBI, the Securities and Exchange Board of India (SEBI), etc. Such FDI is subject to conditions, including minimum capitalization norms, as specified by the relevant regulator/government agency. Accordingly, the minimum capitalization norms specified for NBFCs have been removed, as most regulators have prescribed minimum capitalization norms.

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 (DIPP) 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, pension, defense, banking, basic and cellular telecommunications services, civil aviation, retail trading, etc.

The government has abolished the Foreign Investment Promotion Board (FIPB), an interministerial body that was responsible for processing FDI proposals. Individual departments of the government have been empowered to clear FDI proposals, in consultation with the DIPP. This move has helped to ease the processing of foreign investment approvals, as timelines are fixed for the competent authorities to approve FDI applications. Any rejection/refusal of a proposal requires the concurrence of the DIPP.

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 notifies the RBI of the investment and submits 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 (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 is considered a foreign investment. FDI also is permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.
- **Approval route:** Proposed investments that do not qualify for the automatic route must be submitted to the DIPP for forwarding to the relevant government ministry/department; areas where approval is required include defense, 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 farmhouses, 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 SEBI, and FVCIs must register with the SEBI.

Investment by NRIs in shares/convertible debentures on a nonrepatriation basis is deemed to be domestic investment at par with investments made by residents.

To simplify the procedures for Indian companies to attract foreign investments, the distinctions between different types of foreign investments i.e. FDI/FPI/FII/QFI/NRI, etc., have been eliminated and replaced with composite caps.

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

The RBI has permitted the raising of funds from overseas markets by the issue of rupee-denominated bonds, popularly known as "Masala bonds."

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). (See also "Deductions," under 3.3, below.)

Incentives include the following:

- Tax holidays, depending on the industry and region;
- Weighted deductions at 150%/100% 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 above incentives are being phased out.

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;
- Merchandise export from India scheme;
- Service export 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.

Benefits to SEZ units

Units set up in the areas designated as SEZs are granted various tax benefits. Indirect tax benefits include an exemption from customs duty on the import of capital goods and inputs.

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, 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, etc. 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, 2013/Companies Act, 1956 (the Companies Act) and the Insolvency and Bankruptcy Code, 2016.

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.

In the case of a private company, a minimum of two directors are required (of which one must be a resident of India). In the case of a public company, a minimum of three directors are required (of which one must be a resident of India). An individual must obtain a Digital Signature Certificate (DSC) from the certifying authority, and then apply for a Director Identification Number (DIN) from the Ministry of Corporate Affairs (MCA) to act as a director. In the case of a private company, a minimum of two members are required; in the case of a public company, a minimum of seven members are required to form a company.

Promoters are required to file an application to obtain the desired company name, in accordance with the name availability guidelines. The promoters also must register the memorandum and articles of association and prescribed forms with the Registrar of Companies (ROC), along with payment of stamp duty in the state in which the registered office is to be located. If the documents are in order, the ROC will issue a certificate of incorporation. The filing for company formation is made in electronic form.

The MCA has launched a composite form called the Simplified Process for Incorporating Company Electronically (SPICE) form, with the objective of providing speedy incorporation-related services through one electronic form. The form permits simultaneous applications for DINs, name availability and company registration, as well as a Permanent Account Number (PAN) and Tax Deduction Account Number (TAN) under the Income Tax Act.

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

Forms of entity

Companies are broadly classified as private limited companies, public limited companies, small 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 to the amount unpaid on the shares held) or by guarantee (the liability of a member is limited 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.

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 small company is a company (other than a public company) whose paid-up share capital does not exceed INR 50 million (or an amount that may be prescribed, which may not be more than INR 500 million) and whose turnover as per its last profit and loss account does not exceed INR 20 million (or an amount that may be prescribed, which may not be more than INR 200 million). Any company that

is a holding company, a subsidiary company, a company registered under "section 8" or a company or body corporate governed by any special act will not qualify as a small company.

A "section 8" company 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 permitted objective that intends to apply its profits (if any) or other income in promoting its objectives. 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.

An OPC is a company having only one individual as its member. A natural person who is an Indian citizen and resident in India is eligible to incorporate an OPC.

Requirements for limited companies

The government has relaxed the applicability of various provisions of the Companies Act, 2013 to private companies, such as procedures relating to general meetings and resolutions and agreements to be filed with the ROC.

Capital: There is no minimum paid-up capital prescribed for a public limited company or a private limited company.

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 upon winding up or otherwise. In other words, preference share capital has priority in repayment of both dividends and capital. The tenure of preference shares to be issued by companies engaged in infrastructure projects is a maximum of 30 years; for others, it is a maximum of 20 years. While equity shares confer the right to vote on all resolutions that require shareholder approval, a preference share carries voting rights only with respect to matters that directly affect the rights of the preference shareholders. However, where dividends on preference shares are not paid for a period of two years or more, preference shareholders will have a right to vote on all resolutions placed before the company.

Equity shares are shares that are not preference shares. Equity shares are 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 a consistent track record of distributable profits in the preceding three years and has complied with other conditions. These conditions do not apply to a private company where relevant provisions are contained in its memorandum of association and articles of association. Listed public companies cannot issue shares in any manner that may confer on any person superior rights to voting or dividends *vis-à-vis* the rights on equity shares that already are 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. Shares of an unlisted public company or private company also may be held in electronic form. For shares held in electronic form, no stamp duty is payable on a transfer of the shares.

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 "whole-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). Companies having paid-up share capital of INR 50 million or more are required to appoint a whole-time CS. The maximum term of a managing director/manager 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: The board of directors acts as representative of stockholders and occupies a fiduciary position in relation to the company. Only individuals may be appointed as directors. A public limited company must have at least three directors; a 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, unless a higher number of IDs is required to be appointed due to the composition of the audit committee. An ID may not have any pecuniary relationship with the company or a related person, and is entitled only to sitting fees. Recently, an exemption from the requirement to appoint IDs has been given to certain unlisted public companies that are a joint venture, a wholly owned subsidiary or a dormant company.

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

A director must vacate the office if he/she is absent from all the board meetings held during a 12-month period.

Board meetings may be held anywhere by giving seven days' notice, or shorter notice with consent of all the directors. Subject to certain exceptions, a minimum of four board meetings must be held every year, and at least one board meeting must be held in every calendar quarter. The time gap between two consecutive board meetings cannot exceed 120 days.

The board can approve matters in an in-person meeting or through a circular resolution (other than items that are required to be approved in an in-person meeting). Meetings also may be held through video conferencing, subject to compliance with requirements specified by the MCA. 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 non-executive directors, at least half of which must be IDs.

The audit committee plays a key role in assisting the board to fulfill its oversight responsibilities in areas such as an entity's financial reporting, internal control systems, risk management systems, related party transactions, internal and external audit functions, etc. The nomination and remuneration committee's role is to recommend the appointment of directors or senior management, as well as their remuneration.

Public companies with more than 1,000 shareholders must form a stakeholder relationship committee to resolve the grievances of stakeholders.

General meeting: An annual general meeting (AGM) of members must be held at least once each calendar 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, such that the time gap between two AGMs does not exceed 15 months (extendable up to three months with approval of the ROC, except for the first AGM). 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 at least 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: five members personally present, if the number of members is no more than 1,000; 15

members personally present, if the number of members is more than 1,000 and up to 5,000; and 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 are required for various matters laid down in the Companies Act, 2013, including 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.

Any member of the company entitled to attend and vote at the meeting can appoint a proxy to attend and vote on its behalf. However, a proxy will not have the right to speak or vote, except to vote on a poll. A member of a company without share capital cannot appoint a proxy unless provided by the articles of association.

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.

Apart from the provisions of the Companies Act, 2013, companies also are required to comply with the secretarial standards announced by the Institute of Company Secretaries of India in relation to holding board and general meetings.

Dividends: Dividends must be paid in cash. Dividends 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 providing for depreciation and remaining undistributed profits; or (c) both. No dividend may be declared unless carried-forward losses and depreciation not provided for in earlier years has been set off against the company's profits for the current year. No dividend may be declared or paid by a company from its reserves, other than free reserves. 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 accumulated profits earned in the previous year(s) and transferred to free reserves, subject to the 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 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, 2013 sets forth the list of activities for which CSR activities can be undertaken by companies. A company's board of directors is required to ensure that, in a financial year, the company spends at least 2% of its average net profits during the three immediately preceding financial years toward CSR. The board's reporting requirements for a company include an annual report on CSR. Foreign companies are required to file a similar report with the ROC, along with the annual accounts.

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 the maximum number of partners. An LLP also must have at least two designated partners (DPs) 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 DP). DPs are liable for compliance under the LLP Act, and in the event of noncompliance they will be liable for penalties. Every DP must obtain a DIN before becoming a DP.

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 its 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. See under 1.4, above, for provisions relating to FDI.

Branch, liaison office or project office of a foreign company

In addition to establishing a subsidiary or a joint venture company 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).

An LO acts as a communication channel between the parent company and Indian companies. An LO is not allowed to undertake any business in India and cannot earn income in India. The expenses of an LO 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 and represent the parent/group company in India.

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 parent company in India and acting as a buying/selling agent in India;
- Rendering services in information technology and development of software in India;
- Rendering technical support 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 around 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 an LO). The net worth of the foreign head office should be minimum of USD 100,000 or its equivalent to establish a BO (USD 50,000 or its equivalent for an 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 in the home country). The RBI has liberalized the process for setting up a BO or LO: RBI approval no longer is required (except in certain cases) and the permission to set up the BO or LO is given by the Authorized Dealer Bank (AD Bank). The validity of an LO is three years (which can be further extended for three years upon fulfillment of certain conditions), except in the case of LOs for non-banking companies and entities engaged in the construction and development sector, which are valid only for two years and cannot be further extended.

Registration is required with the ROC under the Companies Act, 2013. Financial statements, annual activity certificates and other changes relating to the parent company and Indian office, etc. must be submitted to the ROC/RBI. In the case of multiple BOs/LOs, a combined annual activity certificate in respect of all the offices in India must be submitted to the ROC/RBI by the "nodal office" of the BOs/LOs.

Foreign companies planning to carry out specific projects in India may establish a PO/SO for the purpose of carrying out activities relating to the project. Approvals are granted by the AD Bank to foreign companies to establish POs in India if 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. The validity of a PO is for the tenure of the project.

BOs, LOs and POs established in India by foreign entities are required to make certain disclosures with the RBI/state police authorities (only for Indian offices established from specified countries), and with the ROC upon set up, 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.

Alternative Investment Fund (AIF)

An AIF is any fund established or incorporated in India that is a privately pooled investment vehicle that collects funds from Indian or foreign investors for investing in accordance with a defined investment policy for the benefit of its investors. AIFs can be established as a trust, company or LLP. AIFs are governed under the SEBI (Alternative Investment Funds) Regulations 2012, and require registration with the SEBI.

Business trusts

Real estate investment trust (REIT) and infrastructure investment trust (Invit) taxation regimes have been introduced to allow these structures ("business trusts") to be set up in accordance with the SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014, respectively. 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.

Eligible foreign investors are permitted to make investments under the automatic route in units of AIFs, REITs, Invits and other investment vehicles registered and regulated under relevant regulations of the SEBI or any other designated authority.

2.2 Regulation of business

Mergers and acquisitions

Mergers and acquisitions are governed by the Companies Act, 2013 and sector-specific law, such as insurance, pension and banking laws, telecommunications guidelines, etc. Listed companies must comply with the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009; SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; and SEBI (Prohibition of Insider Trading) Regulations, 2015. If a merger has cross-border aspects or a nonresident 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 sale, lease or disposal of all, or substantially all, of an undertaking of a public company, the shareholders' approval by special resolution must be obtained. This also may be done with the approval of the National Company Law Tribunal (NCLT), depending on the manner of transfer adopted.

The Companies Act, 2013 permits the merger of a foreign company with an Indian company. The MCA has announced provisions that would permit the merger of an Indian company with a foreign company and vice versa under the Companies Act, 2013. However, for mergers of an Indian company with foreign company, the provisions under the Foreign Exchange Management Act, 1999 are yet to be formalized.

A reorganization involving the amalgamation of companies or a tax-neutral demerger requires approval of the NCLT, as well as three-fourths of the members and creditors of the companies (by

value), 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 prior approval of the stock exchange and the SEBI before an application is made to the NCLT, obtaining members' approval through a postal ballot and e-voting (in certain cases).

Provisions for fast-track mergers have been introduced, which may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company.

Where an acquisition exceeds a specified threshold or there is a change in control of a listed company, the acquirer must make an open offer to members 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, buyback of shares, etc.) no open offer is required if specified disclosures are made.

The government can order the amalgamation of two or more companies if this is in the public interest.

Monopolies and restraint of trade

India's markets are monopolized in only a few areas reserved for the public sector, such as postal services and atomic energy. 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. Specific legislation relevant to competition and trade is described below.

Competition Act, 2002

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, a demerger or an amalgamation, etc., that exceeds a specified threshold of assets/turnover (in and outside India) must first be approved by the Competition Commission, unless an exemption is available.

Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016 provides uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). The new code attempts to simplify the process of insolvency and bankruptcy proceedings. It has sped up the insolvency resolution processes for corporate revivals and rehabilitations, and offers increased protection of the interests of creditors. Its measures are expected to speed up corporate exits for unviable entities and improve the ease of doing business in India.

Real Estate (Regulation and Development) Act 2016

The Real Estate (Regulation and Development) Act 2016 has brought radical change for buyers and developers/builders in the real estate sector. The act introduced the Real Estate Regulatory Authority as the regulator for the sector. The act seeks to promote fair practices to protect the interests of buyers and impose heavy penalties on developers/builders in the case of substandard quality of construction or inordinate project delays. The new law is expected to boost demand in the real estate space.

2.3 Accounting, filing and auditing requirements

Accounting standards

Accounting standards are issued by the Institute of Chartered Accountants of India (ICAI). 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 initiated steps toward convergence of its accounting standards with IFRS (subject to a few carve-outs); these standards are called Indian Accounting Standards or Ind AS. As from accounting periods commencing on or after 1 April 2016, these standards are mandatory for listed and unlisted companies meeting certain net worth thresholds, in various phases.

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/LLP 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 paid-up capital of INR 50 million or above; and companies with turnover of INR 1 billion or above. Banks, insurance companies, power companies, nonbanking financial companies and their overseas subsidiaries are 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 approval to have a year-end other than 31 March under the Companies Act, 2013 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 state governments. The central government levies direct taxes, such as the corporate income tax (including minimum alternate tax), capital gains tax and dividend distribution tax (DDT). It also levies the equalization levy and indirect taxes, such as central sales tax (CST), securities transaction tax (STT), commodities transaction tax (CTT), customs duty and excise duties. Taxes levied at the state level include value added tax (VAT), profession tax and real estate taxes. Transaction taxes recently underwent a major change with the introduction of goods and services tax (GST), effective as from 1 July 2017. GST has replaced the service tax; the CST, VAT and excise duty (except for a few specified non-GST goods); and several other 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 IFSCs.

Specific taxation regimes are provided to ensure certainty in taxation for two categories of investment vehicles—REITs and Invits (business trusts).

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	25%, plus the surcharge and cess, for certain domestic companies engaged in manufacture or production, or having a total turnover or gross receipts up to INR 500 million in financial year 2015-16 30%, plus the surcharge and cess, for other resident companies 40%, plus the surcharge and cess, for nonresident companies
Surcharge	7% for resident companies having income exceeding INR 10 million but less than or equal to INR 100 million (2% for nonresident companies); 12% for resident companies having income exceeding INR 100 million (5% for nonresident companies)
Cess	3%
Branch tax rate	40%, plus the surcharge and cess, applicable to nonresident 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)

India Quick Tax Facts for Companies

Dividend distribution tax	15%, plus the surcharge and cess
Tax on distribution of income through buyback 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%/20%, 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
- Equalization levy	6% (nonresidents without a PE in India)
Capital tax	No
Social security contributions	12% of wages (employee contribution)/12% of wages (employer contribution)
Real estate tax	Varies
Securities transaction tax	Varies
Stamp duty	Varies
Commodities transaction tax	0.01%
GST	0%-28%
Customs duty (on GST and non-GST goods)	Median rate of basic customs duty is 10%, plus 3% customs cess; additional duty levied for non-GST goods and IGST levied for GST goods
Central sales tax (on non-GST goods)	2%
Central excise duty (on non-GST goods)	Varies
VAT (on non-GST goods)	Varies

3.2 Residence

A company is considered resident in India if it is incorporated in India or if its place of effective management, in that year, is in India.

A partnership firm, LLP or other non-individual 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 non-individual 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 that is deemed to arise or accrue in India or deemed to be received 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 includes capital gains derived 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 (except for capital gains derived by a nonresident in respect of an investment held directly or indirectly in a foreign institutional investor (FII) registered as Category I or Category II under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014); and
- Interest, royalties and technical service fees paid by the Indian government or an Indian resident or nonresident. 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 services are 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. Royalties also 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. The standard corporate tax rate for domestic companies is 30%, in addition to the 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), 33.063% (where income exceeds INR 10 million but is less than or equal to INR 100 million) or 34.608% (where income exceeds INR 100 million). (The 2018 budget proposes to reduce the corporate tax rate to 25% (plus the applicable surcharge and cess) for domestic companies whose total turnover or gross receipts during financial year 2016-17 did not exceed INR 2.5 billion, and to replace the current 3% cess with a health and education cess of 4%.)

A 25% rate, plus the surcharge and cess, may be elected by certain domestic companies engaged in the manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing. The rate is available to companies incorporated and registered on or after 1 March 2016 that make an election in the year of incorporation and that do not claim certain specified deductions, incentives, etc. A 25% rate, plus the applicable surcharge and cess, also is applicable for financial year 2017-18 for domestic companies having a total turnover or gross receipts of up to INR 500 million in financial year 2015-16.

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. 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).

A patent box regime provides for a concessional tax rate of 10% (plus the surcharge and cess) on gross income arising from royalties in respect of a patent developed and registered in India by a person resident in India. No deduction for any expenditure or allowance in respect of such royalty income will be allowed. If a person opts for the regime in a tax year but opts out of the regime in any of the five succeeding tax years, it will not be eligible to opt into the regime again for a period of five consecutive tax years succeeding the year of opting out. To qualify for the regime, at least 75% of the development expenditure must be incurred in India.

As from 1 April 2017, income from the transfer of carbon credits is taxable at a rate of 10% (plus the applicable surcharge and cess). No expenditure or allowance in respect of such income is available.

Nonresident companies and branches of foreign companies are taxed at a rate of 40%, plus the surcharge. The amount of tax is further increased by the 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 or equal to INR 100 million) or 43.26% (where income exceeds INR 100 million).

The taxable income of nonresident companies engaged in certain businesses (i.e. prospecting for, extracting or producing mineral oils; and civil construction, testing or 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.

No income will be deemed to accrue or arise in India from the activity of displaying uncut and unsorted diamonds by nonresident companies engaged in the business of mining diamonds in a "Specified Notified Zone" notified by the government.

Any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India, or its sale therefrom to any person resident in India, will be exempt from taxation if such storage or sale is pursuant to notified agreements or arrangements entered into with or approved by the central government. As from 1 April 2017, any income accruing or arising to a foreign company from the sale of the leftover stock of crude oil (if any) from the facility in India after the expiration of such agreements or arrangements is exempt, subject to certain conditions.

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 34.608% (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. An additional income tax of 10% (plus the surcharge and cess) is applicable on dividend income that is declared, distributed or paid by a domestic company to a resident partnership firm if the aggregate dividend income of the recipient exceeds INR 1 million per annum.

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. However, DDT does not apply in respect of distributions made to a business trust by an SPV in which the trust holds 100% of the share capital, subject to certain exceptions. The dividend will continue to be exempt from tax 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 applies). 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% for resident unitholders, and at 5% for nonresident unitholders.
- A business trust enjoys 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.
- Other income of the trust is taxable at the maximum marginal rate.

As from 1 June 2016, a new tax regime was introduced for securitization trusts and their investors. It is applicable to securitization trusts that qualify as an SPV or that are set up by a securitization company or a reconstruction company in accordance with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Income of securitization trusts from

securitization activities is exempt. Any income distributed by the securitization trust will be taxable in the hands of the investor in the same manner and to the same extent as it would have been if the investor had made the investment directly in the underlying assets, and not through the trust. A securitization trust must withhold tax at the time of payment to its investors. There is an option to apply a reduced withholding tax rate or an exemption if the trust obtains a certificate to this effect.

Minimum alternate tax

A minimum alternate tax (MAT) is imposed at 18.5% (plus the surcharge and cess) on the adjusted book profits of corporations (including units in an SEZ and developers of SEZs) whose tax liability is less than 18.5% of their book profits.

To account for the application of Ind AS to specified companies as from 1 April 2016, the MAT provisions were amended as from that date. There is a broad framework for aligning Ind AS-compliant financial statements with the MAT that is computed on book profits.

MAT does not apply to certain income of foreign companies, namely, capital gains on transactions involving securities, certain specified interest, royalties and fees for technical services. MAT also is not applicable on gains arising in the hands of the sponsor on a transfer of shares of an SPV to a business trust in exchange for units of the trust, or on the share of income earned from an association of persons/body of individuals. Royalty income and corresponding expenditure incurred by a taxpayer that opts for the patent box regime is ignored for purposes of the MAT.

MAT is not applicable to a foreign company that is a resident of a country with which India has entered into a tax treaty if the foreign company does not have a permanent establishment (PE) in India, or if the foreign company is a resident of a country with which India has not entered into a tax treaty and the foreign company is not required to seek registration under any law in force relating to foreign companies. (In addition, the 2018 budget would clarify that MAT is deemed never to have been applicable to the taxable income of nonresident companies from certain businesses (i.e. prospecting for, extracting or producing mineral oils; civil construction, testing or commissioning of plants and machinery in connection with turnkey power projects; or operating ships or aircraft) where the taxable income from such businesses is deemed to be a percentage of amounts specified in the Income Tax Act.)

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), 20.39% (where total income exceeds INR 10 million but is less than or equal to INR 100 million) or 21.34% (where total income exceeds INR 100 million). For nonresident companies, if MAT applies, the effective 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 or equal to INR 100 million) or 20.01% (where total income exceeds INR 100 million).

For a company that is a unit located in an IFSC and that derives its income in convertible foreign exchange, the MAT rate is 9% (plus the applicable surcharge and cess).

As from 1 April 2017, tax paid under the MAT provisions may be carried forward for set off against income tax payable in the next 15 years, subject to certain conditions; however, the tax credit in respect of the MAT cannot be carried forward to a subsequent year to the extent of the difference between the amount of the foreign tax credit allowed against the MAT and the foreign tax credit allowable in computing tax under the normal provisions.

MAT is not payable on the 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. (The 2018 budget proposes to reduce the rate to 9% (plus the applicable surcharge and cess) for units located in an IFSC.) AMT also is imposed on a person eligible for investment-linked incentives. As from 1 April 2017, tax paid under the AMT provisions may be carried forward for set off against income tax payable in the next 15 years, subject to certain conditions; however, the tax credit in respect of the AMT cannot be carried forward to a subsequent year to the extent of the difference

between the amount of the foreign tax credit allowed against the AMT and the foreign tax credit allowable in computing tax under the normal provisions.

AMT is not applicable to individuals, associations of persons and bodies of individuals if their adjusted total income does not exceed INR 2 million.

DDT 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 a 12% surcharge and a 3% cess on the dividends declared, distributed or paid. DDT payable must be grossed up and calculated as 15% of the aggregate dividend declared, distributed or paid, including the DDT. The effective rate is 20.3576%, including the surcharge and cess. 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, if certain conditions are satisfied. Dividend 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 2018 budget proposes to impose a 30% DDT (plus the applicable surcharge and cess) on deemed dividends in the nature of loans and advances from closely held companies. Equity-oriented mutual funds also would be liable for a 10% DDT (plus applicable surcharge and cess) on profits distributed to unit holders.)

DDT does not apply in respect of distributions made to a business trust by an SPV in which the trust holds 100% of the share capital, subject to certain exceptions. A dividend declared by a unit located in an IFSC that derives income solely in convertible foreign exchange will not be subject to DDT if the dividend is declared out of the unit's current income.

An unlisted domestic company is liable to pay additional tax of 20% on any income distributed to a shareholder on account of a buyback of shares. The distributed income is the consideration paid by the company on the buyback of shares, reduced by the amount received by the company on account of the issue of such shares. The income arising to the shareholders on account of the buyback of shares will be exempt.

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 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. The central government has issued certain income computation and disclosure standards relating to particular taxpayers or classes of income.

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 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.
- A 100% deduction from profits arising from the business of developing and building housing projects is available, subject to certain conditions. The housing project must be duly approved by the competent authority on or before 31 March 2019.

- A deduction of up to 150% as from financial year 2017-18 (limited to 100% as from financial year 2020-21) is available in respect of capital and revenue expenditure on scientific research conducted in-house by specified industries, and for payments made to specified organizations for scientific research. A 100% deduction is allowed for the sum paid to a company registered in India that is carrying on scientific research activities, to a research association or to a university, college or other institution engaged in research in social science or statistical research.
- Investment-linked incentives (a 100% 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). As from financial year 2017-18, an investment-linked incentive of a 100% deduction is available for developing and/or maintaining and operating a new infrastructure facility (i.e. a road, highway project, water supply project, port, etc.), subject to specified conditions.
- 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). No deduction will be available if the specified activity commences after 31 March 2017.
- Incentives involving a deduction of 100% of the profits derived by a company or LLP from an eligible business may be elected by the taxpayer for any three consecutive assessment years out of the seven years beginning from the year in which the eligible start-up is incorporated, subject to specified conditions. The company or LLP must be incorporated on or after 1 April 2016 and before 1 April 2019 and be engaged in an eligible business (a business that involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property). (The 2018 budget proposes some modifications to this incentive.)
- A company that employs new regular workers whose salary is less than or equal to INR 25,000 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, subject to certain conditions. (The 2018 budget proposes some modifications to this incentive.)
- 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.
- STT 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 for 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, leave encashment and payments to railways for use of their assets. No deduction is allowed for income taxes or interest thereon.

No deduction is allowed for expenses incurred for CSR, 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.

No deduction is allowed for expenses paid to a person in a day in excess of INR 10,000, unless paid by an account payee check drawn on a bank or an account payee bank draft, or use of the electronic clearing system through a bank account.

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; this has been extended to new plant and machinery acquired on or after 1 April 2016 for taxpayers engaged in the business of transmission of power. 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. The maximum accelerated depreciation will be restricted to 40% of the block of assets (for both old and new assets) as from financial year 2017-18. 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.

Capital expenditure incurred either prior or post commencement of business and actually paid (irrespective of the year in which the liability for the expenditure was incurred) for acquiring the right to use spectrum for telecommunication services (spectrum fees for auction of airwaves) will be allowed as a deduction over the period of the right to use the spectrum.

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.

No depreciation will be available in relation to an asset if payment is made to a person in a day in excess of INR 10,000, unless paid by an account payee check drawn on a bank or an account payee bank draft, or use of the electronic clearing system through a bank account.

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. As from 1 April 2017, certain relaxations were provided to startups with regard to the continuity of ownership test. (The 2018 budget proposes similar relaxation to companies under the Insolvency and Bankruptcy Code.) In the case of an eligible start-up, 51% continuity of ownership is satisfied if all shareholders of the company who held shares with voting power on the last day of the year or years in which the loss was incurred: (1) continue to

hold those shares on the last day of such previous year; and (2) such loss was incurred during the seven-year period beginning with the year in which the company was incorporated.

Losses may be carried forward only if the tax return is filed by the due date. However, unabsorbed depreciation may 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 comprises 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. In certain cases, the income may be assessed as business income if the company is in the business of letting out property. 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.

As from 1 April 2017, the amount of losses under the head of income from house property that may be set off against any other head of income is restricted to INR 200,000. Unabsorbed losses from house property may be carried forward for up to eight years for offset against the income from house property of subsequent years.

Income from other sources

“Other income” is the residual category under which income is taxable if it is not chargeable under another specified head of income. 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.

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

As from 1 April 2017, an additional income tax of 10% (plus the surcharge and cess) applies on a gross basis on dividend income that is declared, distributed or paid by a domestic company to a resident individual, Hindu Undivided Family (HUF) or partnership firm if the aggregate dividend income of the recipient exceeds INR 1 million per annum.

Advances received for the transfer of a capital asset that subsequently are forfeited are taxable.

Consideration received by a closely held company (other than a venture capital undertaking or company, a startup 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.

Where a company, partnership firm, individual or HUF receives any sum of money, immovable property or any other property (in excess of INR 50,000) after 1 April 2017 without providing consideration (or provides inadequate consideration) in exchange, the recipient will be taxable to tax under this head on the value of the property (or on the difference between the value of the property and the inadequate consideration provided). The relevant value is the stamp duty value for immovable property and the fair market value for any other property. (The 2018 budget would modify these rules so that consideration provided for a transfer of immovable property would not be treated as inadequate if it differs from the stamp duty value by no more than 5%.)

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 listed shares, specified securities/bonds and units of mutual funds, and to more

than 24 months for shares of a company that is not listed on a recognized stock exchange and immovable property (land, buildings or both).

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 where STT is paid are exempt. The exemption generally is not available if the equity shares were acquired on or after 1 October 2004 and the acquisition was not chargeable to STT; however, the CBDT has clarified that the exemption is available in specified cases (such as acquisitions under preferential allotment, off market acquisitions, acquisitions during a delisted period, etc.). (The 2018 budget proposes to eliminate the exemption to the extent the gains exceed INR 100,000, and to impose a 10% tax (plus the applicable surcharge and cess), subject to a "grandfathering" provision. In conjunction with this change, an equity-oriented mutual fund would be liable to pay a DDT of 10% on profits distributed to its unit holders.) An exemption is available for long-term capital gains in respect of transactions undertaken in foreign currency on a recognized stock exchange located in an IFSC, as well as a concessional rate of 15% on short-term capital gains, even though no STT is payable in respect of such transactions. (The 2018 budget proposes to introduce a full tax exemption for capital gains derived by nonresident investors from the sale of derivatives, rupee-denominated bonds and global depository receipts in respect of transactions undertaken in foreign currency on a recognized stock exchange located in an IFSC.)

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% (plus the applicable surcharge and cess). If such units are traded outside a stock exchange (no STT paid), long-term capital gains will be taxable at 10% (plus the applicable surcharge and cess), and short-term capital gains at 30% (plus the applicable surcharge and cess).

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 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). (As noted above, the 2018 budget proposes to eliminate the general exemption for long-term capital gains, but would introduce a full tax exemption for certain transactions carried out through an IFSC.) 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) 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) 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 the base year starting from 1 April 1981 may use the fair market value of the asset on that date as the cost basis for computing the capital gain. The base year has been shifted to 1 April 2001, allowing the taxpayer to substitute the fair market value of the capital asset on 1 April 2001 as the cost of acquisition. This generally reduces tax liability. Long-term capital gains of nonresidents on unlisted securities or shares of a closely held company 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) 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 or notified units (to promote start-ups) 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 the units in the business trust. On the disposal, 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.

Capital gains are computed by taking into account the amount of the full value of consideration received or accrued on a transfer of a capital asset. As from 1 April 2017, where the consideration for a transfer of shares of a company (other than quoted shares) is less than the fair market value of such shares (determined in accordance with the prescribed manner), the fair market value will be deemed to be the full value of the consideration.

Losses incurred on the transfer of short-term capital assets during an assessment year may be set off against long-term or short-term capital gains 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 will be the aggregate of the credit amounts computed separately for each source of income arising from a particular country or specified territory outside India, 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. 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. India signed the OECD multilateral instrument (MLI) on 7 June 2017.

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 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	Finland	Malta	Slovenia
Armenia	France	Mauritius	South Africa
Australia	Georgia	Mexico	Spain
Austria	Germany	Moldova	Sri Lanka
Azerbaijan	Greece	Mongolia	Sudan
Bangladesh	Hungary	Morocco	Sweden
Belarus	Iceland	Mozambique	Switzerland
Belgium	Indonesia	Myanmar	Syria
Bhutan	Ireland	Namibia	Taiwan
Botswana	Israel	Nepal	Tajikistan
Brazil	Italy	Netherlands	Tanzania
Bulgaria	Japan	New Zealand	Thailand

Canada	Jordan	Norway	Trinidad & Tobago
China	Kazakhstan	Oman	Turkey
Colombia	Kenya	Philippines	Turkmenistan
Croatia	Korea (ROK)	Poland	Uganda
Cyprus	Kuwait	Portugal	Ukraine
Czech Republic	Kyrgyzstan	Qatar	United Arab Emirates
Denmark	Latvia	Romania	United Kingdom
Egypt	Libya	Russia	United States
Estonia	Lithuania	Saudi Arabia	Uruguay
Ethiopia	Luxembourg	Serbia and Montenegro*	Uzbekistan
Faroe Islands	Macedonia	Singapore	Vietnam
Fiji	Malaysia	Slovakia	Zambia

* 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

India has comprehensive transfer pricing regulations that 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. In addition to cross-border related party transactions, the regulations have been extended to cover domestic transactions involving transfers of goods or services from a unit claiming a tax holiday to another unit or to any other closely connected person 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" is broad, 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 and 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 transactions covered under the transfer pricing rules must satisfy the arm's length principle. 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 (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.

Finance Act, 2017 inserted a secondary adjustment provision in the Indian transfer pricing regulations requiring cash repatriation of the differential amount arising on account of a transfer pricing adjustment. It also provides that upon failure to repatriate cash within 90 days, the amount would be deemed as an advance to an associated enterprise and would be subject to interest at a specified percentage.

Transfer pricing audits recently have been more aggressive, leading to controversy and litigation. Several measures have been adopted to curb litigation and provide tax certainty, including the introduction of safe harbor rules that apply in certain specified sectors and provide for automatic acceptance of taxpayer's transfer price if the price is equal to or 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. Recently, the CBDT revised and relaxed safe harbor rates, to encourage more taxpayers to adopt them. The CBDT also has included low value-added service charges within the ambit of the safe harbor provisions.

A taxpayer may enter into an advance pricing agreement (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 may be "rolled back" to the prior four years. It is legally binding on the taxpayer and on the tax authorities in respect of the international transaction for which it is entered into, except where there is a change in the law having a bearing on the APA or the APA was obtained on the basis of fraud or misrepresentation.

To avoid double taxation, a taxpayer may apply for assistance of the competent authorities under a mutual agreement procedure (MAP). The taxpayer may file a MAP application against a tax dispute raised by the Indian tax authority or the tax authority of an associated enterprise.

Additionally, several other measures, such as the introduction of a dispute resolution panel, risk-based transfer pricing assessments, additional resources to handle transfer pricing audits and an extension of the time to complete the audit have been introduced.

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

The GAAR provisions, which were to be implemented as from 1 April 2015, were deferred and apply to investments made after 1 April 2017. The GAAR empowers 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: (1) it creates rights or obligations that normally would not be created between persons dealing at arm's length; (2) it results, directly or indirectly, in the misuse or abuse of the Income Tax Act; (3) it lacks commercial substance or is deemed to lack commercial substance; and (4) it is carried out in a manner that would not be used for *bona fide* purposes. The GAAR will apply to arrangements where the tax benefit exceeds INR 30 million. Once the GAAR is invoked, tax treaty benefits also may be denied for the arrangement.

BEPS measures

The following table summarizes the steps India has taken to implement the BEPS recommendations:

Action	Implementation
VAT on business to customers digital services (Action 1)	An equalization levy (an amount to be withheld on payments for online advertising to be deposited in the government exchequer) has been introduced. See under 3.8, below. (The 2018 budget proposes to incorporate the concept of a digital PE into India's domestic tax law.)
Hybrids (Action 2)	Not yet known.

CFCs (Action 3)	Not yet known. India currently does not have CFC regulations.
Interest deductions (Action 4)	Not yet known. There is a proposal to restrict the deduction of excess interest.
Harmful tax practices (Action 5)	India has a concessional regime for taxation of royalty income from patents.
Prevent treaty abuse (Action 6)	India has introduced a GAAR into the domestic tax law.
PE status (Action 7)	Not yet known (The 2018 budget proposes some changes to expand and align the definition of a "business connection" under India's domestic law with the scope of an agency PE under the BEPS project and the MLI. The budget also proposes to incorporate the concept of a digital PE into India's domestic tax law.)
Transfer pricing (Actions 8-10)	With respect to DEMPE, several aspects of the BEPS guidance in actions 8-10 are in line with the practices and additional guidance already provided by the Indian tax authorities. Therefore, there has been no communication from the Indian tax authorities regarding the specific introduction of BEPS actions 8-10 into Indian transfer pricing regulations.
Disclosure of aggressive tax planning (Action 12)	Not yet known.
Transfer pricing documentation (Action 13)	<p>The Finance Act 2016 updated the Indian transfer pricing documentation requirements to incorporate a specific reporting regime in respect of the master file and CbC reporting. The CbC reporting requirements are applicable as from FY 2016-17 to international groups with consolidated revenue exceeding EUR 750 million in the immediately preceding year.</p> <p>India is a signatory to the multilateral competent authority agreement for the automatic exchange of CbC reports.</p>
Dispute resolution (Action 14)	Not yet known, although government sources have indicated that mandatory and binding arbitration is unlikely to be acceptable to India.
Multilateral instrument (Action 15)	India signed the OECD MLI on 7 June 2017.

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 (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 and specified domestic 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. A scheme has been introduced for reducing tax disputes in relation to specified taxes. A qualifying declarant under the scheme may receive immunity from penalties and prosecution, subject to certain conditions.

All taxpayers are required to apply for a 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; however, this is not the case for payments to nonresidents that are in the nature of interest, royalties, fees for technical services or payments upon a transfer of a capital asset if the nonresident furnishes the prescribed documents to the payer. (The 2018 budget would broaden the circumstances in which a PAN is required and would require the "principal officer" of an entity to obtain a PAN under certain circumstances.)

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 re-opened within seven years from the end of the financial year in which the income escaping audit exceeds INR 10,000. However, the proceedings can be re-opened 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 re-opened 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 the administration of the 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. The AAR also may issue rulings in relation to the tax liability of residents in prescribed cases, and 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).

India also has an APA scheme in place and allows for unilateral, bilateral and multilateral APAs.

3.8 Other taxes on business

Equalization levy

An equalization levy of 6% on the amount of consideration for specified services received by a nonresident without a PE in India must be withheld by a resident or a nonresident with a PE in India. "Specified services" means online advertising, any provision for digital advertising space, any other facility or service for the purpose of online advertisement or any other service that may be notified by the central government. The levy will not apply if the consideration does not exceed INR 10,000 in a year. The income subject to levy will not be taxed in the hands of the recipient. The corresponding expenses in the nature of consideration will be deductible only if the levy is deducted and deposited with the government on or before the due date of filing the tax return for that year. Payment on a subsequent date will enable the payer to claim the deduction for the year of payment.

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 12% and a cess of 3%). DDT payable must be grossed up 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.

A 5% withholding tax, plus the applicable surcharge and cess, applies to the following types of interest paid to a nonresident:

- Interest income received by a business trust from an SPV, when distributed onward to the business trust's nonresident unit holders;
- Interest paid on specified borrowings in foreign currency, 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 on or after 1 July 2012 and before 1 July 2020;
- Interest paid on money borrowed by an Indian company by way of an issue of rupee-denominated bonds outside India (commonly known as Masala bonds) before 1 July 2020; and
- Interest paid on or after 1 June 2013 and before 1 July 2020 on investments made by an FII or a QFI in a rupee-denominated bond of an Indian company, or a government security.

If the nonresident does not have a PAN, tax must be withheld at the higher of the applicable tax treaty rate or 20%; however, this does not apply if the payments are in the nature of interest and the foreign taxpayer furnishes the prescribed documents to the payer.

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 10%, plus the applicable surcharge and cess, unless reduced by a treaty. Thus, the effective withholding rate is 10.3% (where total income is less than or equal to INR 10 million), 10.506% (where total income exceeds INR 10 million but is less than or equal to INR 100 million) or 10.815% (where total income exceeds INR 100 million). (The 2018 budget proposes to introduce a withholding tax exemption for royalties and fees for technical services paid to nonresidents by the National Technical Research Organization.)

If a treaty applies, but the nonresident does not have a PAN, tax must be withheld at the higher of the applicable tax treaty rate or 20%; however, this does not apply if the payments are in the nature of royalties and the foreign taxpayer furnishes the prescribed documents to the payer.

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: each contributes 12% of the employee's basic salary to the employee provident fund.

4.6 Other

Contractor's tax

Payers must withhold tax at a rate of 40%, plus a surcharge of either 2% (if payment exceeds INR 10 million but is less than or equal to INR 100 million) or 5% (if payment exceeds 100 million) and a cess of 3% from payments to nonresident contractor companies.

Payers must withhold tax at a rate of 30%, plus a surcharge of either 10% (where total income paid or likely to be paid exceeds INR 5 million but does not exceed INR 10 million) or 15% (where total income paid or likely to be paid exceeds INR 10 million) and a cess of 3% from payments to nonresident individuals. For payments to nonresident, noncorporate entities, the applicable surcharge is 12% (where total income paid or likely to be paid exceeds INR 10 million)

An application may be submitted to the tax authorities to benefit from a lower rate or an exemption.

Purchases 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 the consideration is equal to or exceeds INR 5 million.

Rental payments

Individual/HUF payers must withhold tax at a rate of 5% on rent payable to a resident in an amount exceeding INR 50,000 per month or part of a month. Persons other than individuals and HUFs must withhold tax at a rate of 2%/10% (depending on the type of property) on rent payable to a resident in an amount exceeding INR 180,000 for a financial year.

Tax collected at source

A seller is required to collect tax at source (TCS) at specified rates ranging from 1% to 5% at the time of sale of specified items exceeding prescribed limits. TCS at 1% is applicable to sales of motor vehicles with a value exceeding INR 1 million.

Equalization levy

See under 3.8, above.

5.0 Indirect taxes

5.1 Goods and services tax

GST was introduced in India on 1 July 2017 and has been applicable throughout the country as from this date, except in the state of Jammu and Kashmir where it was introduced on 8 July 2017.

The introduction of GST is a significant milestone in indirect tax reform in India. The government has amalgamated a large number of central and state government taxes into a single tax that allows an input tax credit for prior-stage taxes, to mitigate the cascading effect of taxes and pave the way for a common national market. GST has replaced the following indirect taxes:

- **Central government taxes:** Central excise duty (except for non-GST goods); excise duties on medicinal and toilet preparations; additional excise duties on goods of special importance; additional excise duties on textiles and textile products; additional customs duties (CVD); special additional customs duties (SAD); and service tax; and
- **State government taxes:** State VAT (except for non-GST goods); central sales tax (except for non-GST goods); luxury tax; entry tax in lieu of octroi; entertainment tax (however, local bodies have been given the power to levy entertainment tax); taxes on advertisements; purchase tax; taxes on lotteries, betting and gambling; and state cesses and surcharges insofar as they relate to the supply of goods and services.

GST is a destination-based consumption tax applicable on the supply of goods or services, in contrast to the previous concept of tax on the manufacture and sale of goods or the provision of services. There is a dual structure to the GST, with the central GST (CGST) and state GST (SGST) simultaneously levied on a common tax base on all intrastate transactions. In the case of interstate supplies of goods and services, integrated GST (IGST) is levied, which is an aggregate of the CGST and SGST. Imports of goods and services are treated as interstate supplies subject to IGST, in addition to the applicable customs duties on imports of goods. GST applies to all goods other than alcoholic liquor for human consumption and specified petroleum products (see under 5.8, below, for the taxes applicable to these goods).

HSN (Harmonized System of Nomenclature) codes are used for classifying goods and services under the GST regime. Goods and services are categorized under a structure with five rates: 0%, 5%, 12%, 18% and 28%. There is no standard rate *per se*, but the rate for most services is 18%. Exports and supplies to SEZs are treated as zero-rated supplies, subject to certain conditions. There is a special rate of 0.25% on rough precious and semi-precious stones, and 3% on gold. In addition to GST, a GST compensation cess of 15% to 96% applies on a few “demerit” and luxury items like aerated drinks, cars and tobacco products.

Registration for GST is state-specific and subject to a threshold exemption of aggregate turnover (throughout India) of INR 2 million (INR 1 million in specific northeastern states). The threshold exemption does not apply in specific cases, such as to persons making an interstate taxable supply, persons who are required to pay tax under the reverse-charge mechanism, etc.

GST-registered persons are allowed to take an input tax credit for GST paid on procurements to utilize for payment of output tax. However, cross-utilization of CGST and SGST tax credits is not allowed. IGST credits may be utilized for payment of IGST, CGST and SGST, in that order. Credits for non-GST taxes cannot be set off against GST.

The GST rules include the concept of tax deduction at source (which would apply to “notified persons” under certain circumstances) and tax collection at source (which would apply to electronic commerce operators), but these provisions have been deferred until further notice.

GST compliance is an entirely electronic process. Specific returns and filing and payment frequencies are prescribed for different taxpayers:

- Normal taxpayers: Monthly returns, plus an annual return;
- “Composition taxable persons”: Quarterly returns;
- Nonresident electronic service providers: Monthly returns, plus an annual return;
- “Input service distributors”: Monthly returns;

- Persons required to deduct/collect tax at source: Monthly returns; and
- “Casual taxable persons” and nonresident taxable persons: Monthly returns, as applicable.

Monthly return filings and tax payments are due by the 20th day of the following month.

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, unit of an equity-oriented fund or unit of a business trust 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, a unit of a business trust or a unit of an equity-oriented fund that is nondelivery-based;
- 0.017% or 0.05% paid by the seller on the sale of an option in securities;
- 0.01% paid by the seller on the sale of futures in securities;
- 0.001% paid by the seller 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;
- 0.1% each paid by the buyer/seller on the purchase/sale of an equity share or a unit of a business trust that is delivery-based;
- 0.001% paid by the seller on the sale of a unit of an equity-oriented fund that is delivery-based;
- 0.2% paid by the seller on the sale of unlisted equity shares under an offer for sale to the public in an initial public offer; and
- 0.2% paid by the seller on the sale of unlisted units of a business trust acquired from a transfer of shares of an SPV under an offer for sale to the public in an initial public offer.

STT does not apply on transactions undertaken in foreign currency on a recognized stock exchange/recognized association located in an IFSC.

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

Customs duties are levied by the central government, generally on the import of goods (GST as well as non-GST 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 median rate of basic customs duty is 10%. However, the aggregate customs duty includes additional duties and the education cess. Safeguard and anti-dumping duties also are levied on specified goods. (The 2018 budget proposes to replace the cess with a social welfare surcharge at 10% on the aggregate customs duty (except on IGST, anti-dumping duty, safeguard duty and compensation cess). The proposed rate of social welfare surcharge on petrol, high speed diesel, silver and gold is 3%.) The clearance of goods from customs is based on self-assessment of bills of entry 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

Value added tax

VAT is a broad-based consumption-type, destination-based tax based on the invoice tax credit method. With the introduction of the GST, the only goods that continue to be taxed under the VAT regime are alcohol for human consumption and specified petroleum products (petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel).

The standard VAT rate varies from state to state. Exports outside India are 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 VAT from the invoice to the customer.

Central sales tax

The central government levies a CST on the interstate movement of non-GST 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 the seller; however, the seller can collect the tax 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. 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.

Central excise duty

A central excise duty is levied by the central government on the production or manufacture of certain non-GST goods in India (namely, specific petroleum products). The producer or manufacturer is liable for paying the duty. 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 the case of consumer goods). Exports of goods outside India are not liable to excise duty, and a refund or credit for excise duty on inputs and capital goods is available to exporters. However, GST paid on the procurement of non-GST products is not creditable.

State excise duty

State excise duty continues to apply to alcohol for human consumption. The standard rate varies across the states. Returns and payments generally are due either monthly or quarterly, based on the amount of the tax liability.

GST paid on procurements of goods and services cannot be offset against a state excise duty liability, and vice versa.

6.0 Taxes on individuals

India Quick Tax Facts for Individuals

Income tax rates	Progressive from 0% to 30%, plus surcharge of 10% if income is above INR 5 million/15% if income is above INR 10 million and cess of 3% on tax and surcharge
AMT rate	18.5%, plus the surcharge (if applicable) and cess, on adjusted total income in excess of INR 2 million
Capital gains tax rates	Long-term capital gains: 10%/20%, depending on whether indexation has been applied on the acquisition cost Short-term capital gains: Progressive rates, except gains on sales of shares and equity mutual funds, which are taxed at 15% Surcharge (if applicable) and cess must be applied. In certain cases, capital gains are exempt from tax.
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%, plus surcharge and cess
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
GST	0%-28%

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 this 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, an expatriate individual who has lived in India continuously for two years may be liable to tax on worldwide income in the third or fourth year, depending on his/her presence in India.

6.2 Taxable income and rates

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.

Persons ordinarily resident in India are taxed on worldwide income. However, they have recourse to the provisions of an applicable tax treaty to avoid double taxation or claim a credit for taxes paid in the overseas location against their India tax liability. There are specific rules on the methodology of computing the tax credit and the documentation required for this purpose (Form 67). 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: interest, royalties and fees for technical services paid by an Indian resident, subject to certain exceptions; salaries paid for services rendered in India; and income that arises from a business connection or property in India.

Expatriates

Remuneration received by foreign expatriates working in India generally is assessable as salary and is deemed to be earned in India. Income payable for a leave period that is preceded and followed 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 wishing to claim treaty benefits must obtain a tax residency certificate from the country where they are tax resident and generally must furnish this certificate along with a form (Form No. 10F) to obtain treaty benefits.

Where salary is payable in foreign currency, the salary income must be converted to Indian rupees. The conversion rate 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, any tax to be withheld on such an amount 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 set forth 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 type of accommodation) or rent paid, whichever is lower;
- 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: Computed as per the prescribed valuation rules;
- Approved superannuation fund: A contribution in excess of INR 150,000 is taxable;
- Medical reimbursements: Exempt up to INR 15,000 per annum (however, the 2018 budget proposes to eliminate this exemption); and
- Voluntary retirement schemes: Exempt up to INR 500,000 upon satisfaction of specified conditions.

Deductions and reliefs

Standard deductions currently are not allowed (however, the 2018 budget proposes to introduce a standard deduction of the lesser of INR 40,000 or the amount of salary received). Permitted

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 or otherwise (though in the latter case the surplus can be carried forward for future set off); royalties received by authors of any book being a work of literary, artistic or scientific nature; and income from the exploitation of patents of up to INR 300,000. An additional deduction of INR 50,000 is allowed for investment in the National Pension Scheme (NPS). A deduction up to INR 25,000 is allowed for health insurance premiums (INR 30,000 for senior citizens, which the 2018 budget proposes to increase to INR 50,000). Additionally, INR 25,000 (INR 30,000 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 a surcharge of 10% if income exceeds INR 5 million or 15% if income exceeds INR 10 million, subject to applicable marginal relief. An education cess of 3% is levied on the tax and surcharge payable. (The 2018 budget proposes to replace this cess with a health and education cess of 4%.) A general exemption from tax and filing obligations applies for those with income of less than INR 250,000 (INR 300,000 for resident senior citizens at least 60 years old, and INR 500,000 for "very senior citizens" at least 80 years old). A tax rebate of INR 2,500 is allowed for individuals with taxable income up to INR 350,000.

The current tax brackets are: 5% (exclusive of surcharge and cess) for income from INR 250,001 to INR 500,000; 20% (exclusive of surcharge and cess) for income from INR 500,001 to INR 1,000,000; and 30% (exclusive of surcharge and cess) for amounts in excess of INR 1,000,000.

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, subject to certain exceptions, where an individual or an HUF receives any sum of money, immovable property or any other 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). (The 2018 budget would modify these rules so that consideration provided for a transfer of immovable property would not be treated as inadequate if it differs from the stamp duty value by no more than 5%.)

6.4 Real property tax

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

6.5 Social security contributions

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

6.7 Other taxes

Some states levy profession tax. The maximum is INR 2,500 per annum.

6.8 Compliance

All taxpayers are required to apply for a PAN for identification purposes. 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 500,000 or if any refund is claimed in return of income.

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; the deadline is 30 November for an individual that is required to submit a transfer pricing accountant's report. All other individuals must file a return by 31 July immediately following the end of the fiscal year.

Individuals having total income in excess of INR 5 million need to report the assets and liabilities held as of 31 March in the tax return for the relevant year, irrespective of their residence status. Ordinarily resident individuals also have to report specified assets held worldwide and income earned therefrom in their India tax return.

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. This period is proposed to be increased to 26 weeks, with an option to work from home after the end of the period for a duration that is mutually decided by the employer and the employee.

The Industrial Employment (Standing Orders) Act, 1946 requires industrial establishments with 100 or more employees (the number may vary by state) 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 160 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, usually are 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 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 wages per annum.

Pensions

The Employees Provident Fund (EPF) and Miscellaneous Provisions Act, 1952 provides for provident funds and pension contributions for certain establishments with 20 or more employees. An Indian citizen has an option to contribute to the EPF where his/her wages (i.e. basic wages, dearness allowance, retaining allowance and cash value of food concessions) exceed INR 15,000 per month. In practice, several industries are covered under the provident fund laws. Employers and employees contribute 10% or 12% of wages per month (depending upon the industry; the 10% rate applies in limited circumstances). From the employer's contribution, 8.33% of monthly wages (up to INR 15,000) goes toward the pension fund, and the balance toward the provident fund (except in the case of "international workers," where the pension contribution by the employer is 8.33% of the wages). For employees becoming a member of the EPF on or after 1 September 2014, the employer's contribution (12% of wages) goes entirely toward the provident fund. The employee's contribution (12% of monthly salary) continues to be made entirely toward the provident fund.

An exemption from such contributions is provided to expatriates from countries that have concluded a social security agreement with India that is in effect (currently, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Japan, Korea, Luxembourg, Netherlands, Norway, Portugal, Sweden and Switzerland).

The government created the 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 Employees' State Insurance Act, 1948, which applies to all factories that employ at least 10 persons or any establishment specially notified by the government, 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 telecommunications sectors, and for banks. The 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 or more employees (the number may vary by state) 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 a 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 approval from the Ministry of Home Affairs (MHA), may be required for "prior reference countries" (PRCs). 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 Regional Registration Office (FRRO) 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. In some cases even a six-month visa must be registered with the FRRO, if there is a special endorsement on the visa.

Generally, it takes about 10 to 12 business days to process a visa application. However, for PRCs, visa application processing takes about 50-90 working days (there is no fixed timeline), as approval from the MHA is required to process the application. A visa generally is granted for one year or the period of the employment contract, whichever is shorter. An extension can be made in India.

Expatriates often are 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. Employment visa applications of foreign nationals working in India will be processed by the Indian missions abroad. However, foreign nationals applying for an employment visa must draw a minimum salary of INR 1,625,000. Foreign nationals to be appointed as teachers by central higher education institutions have a lower minimum salary of INR 910,000.

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 different jurisdictions that includes:

- Corporate income tax rates;
- Historical corporate rates;
- Domestic withholding tax rates;
- In-force and pending tax treaty withholding rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Information on holding company regimes.

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 100 jurisdictions.

Jurisdiction-specific pages: These pages link to relevant DITS content for a particular jurisdiction (including domestic rates, tax treaty rates, holding company 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; an R&D incentive matrix; monthly treaty updates; and expanded coverage of VAT/GST/sales tax rates.

Webcasts: Live interactive webcasts and Dbriefs by Deloitte professionals provide valuable insights into important tax developments affecting your business.

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9.0 Contact us

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