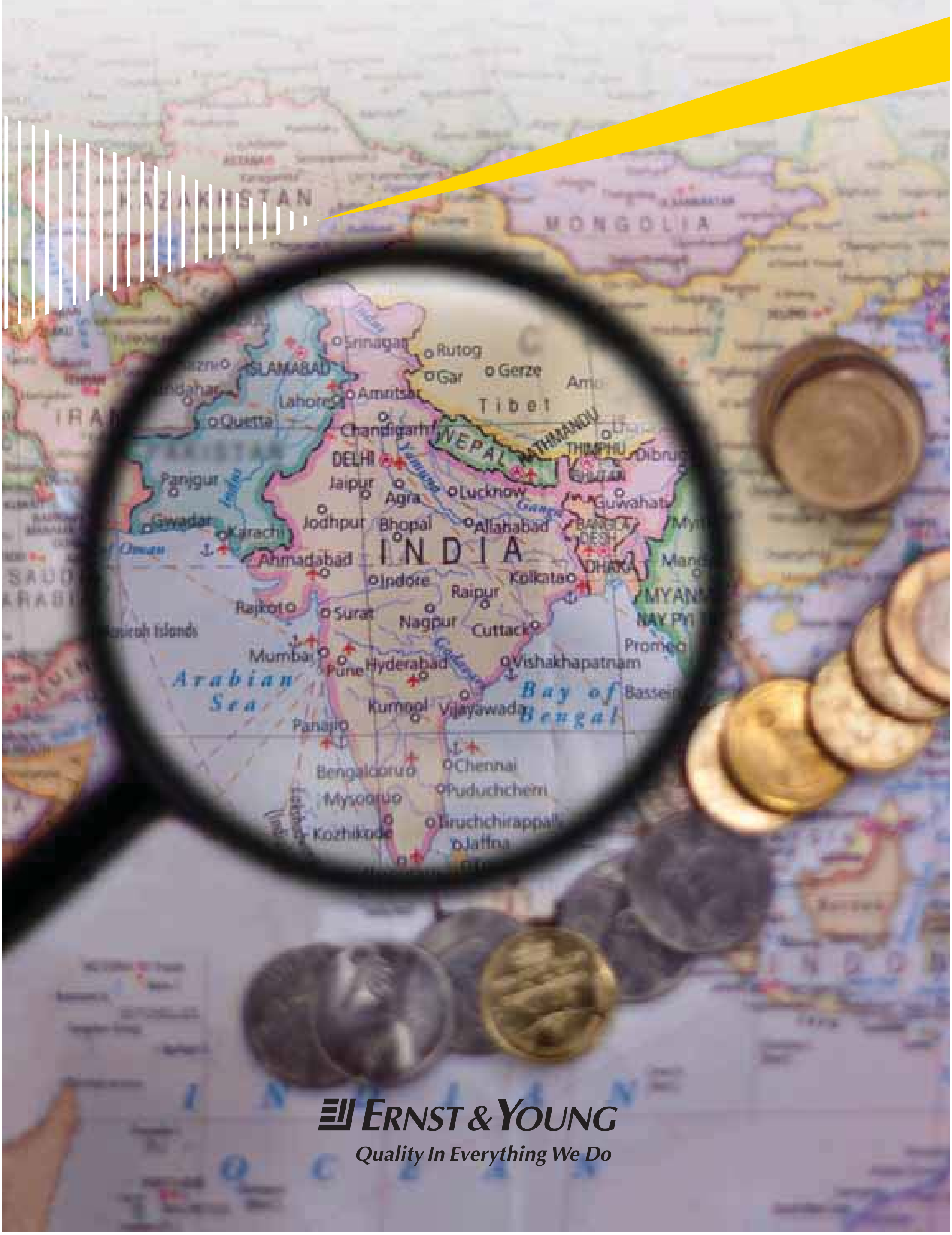
Doing business in India



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"We are keen to see FDI investment to surge in India and to that end, a favourable business climate will be helpful in going forward. We are encouraged to see there is a continued path towards fiscal consolidation. That there is a determination to improve the tax code. There is a determination to cap the subsidies at two per cent. All of those measures are good measures."

Christine Lagarde
Chief, IMF (March 2012)

"The structure of the economy has changed since 1991. Our financial markets are more matured, more diverse and much deeper. They have the resilience to absorb shocks. India's growth story is intact..."

D. Subbarao
Governor, RBI (April 2012)

"I believe that, around the world, there is enormous goodwill for India and most people continue to keep faith with the India growth story. It is natural that they look closely at certain economic indicators, one of them being the exchange rate. Volatility of the exchange rate has reduced in recent weeks. A reassurance on the investment climate, continued inflow of remittances, and a rise in capital flows - both FDI and FII - will bring further stability to the exchange rate. We intend to fine tune policies and procedures that will facilitate capital flows into India."

P Chidambaram
Finance Minister, India

"It is important for India to continue with its structural reforms to sustain its high growth. The fact that even seven per cent growth is spoken of as not being good proves that the Indian economy has set high bench mark. India and the World Bank Group have been exceptionally good partners during a time of financial turmoil and economic uncertainty. India should take its priorities forward to meet the challenges and opportunities lying ahead. This would ensure continuance of the momentum of the Bank's successful engagement with India."

Robert B. Zoellick,
President, World Bank Group,
March 2012

"Despite challenging economic conditions, India continues to be among the fastest growing economies in the world. The growth might have climbed down to 7% from its normal trajectory of 8.5%-9.0%; nevertheless, it continues to be impressive in the midst of anxiety all around. A large domestic market led by the emergence of a important middle class population, investor-friendly policies, rising foreign exchange reserves, availability of skills and demographic prospects are some of the strong positives that are behind the Indian growth story."

Chandrajit Banerjee,
Director General, Confederation of Indian Industry (CII), 2012

"Today, India has global responsibilities of a kind that it did not have earlier. Our presence at the high table of global economic policy makers is a matter of some satisfaction. If India can continue to build on its economic strength, it can be a source of stability for the world economy and provide a safe destination for restless global capital."

Pranab Mukherjee
President and Former Finance Minister, India (March 2012)

This book has been prepared by Ernst & Young Pvt. Ltd. (EYPL) to provide busy executives a quick overview of the investment climate, taxation, forms of business organizations, and business and accounting practices in India.

This publication should be used as a research tool only. However, the information contained here is in a summary form, and should not be substituted for the tax professional's own work in relation to client matters. In those circumstances, reference should always be made to the original reference material quoted against the related information to ensure added accuracy. The information presented in this book has been validated as of 15 July 2012.

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Foreword

The Indian economy continues to grow at a good pace and holds a strong position on the global map. The country's GDP has been growing at an average rate of 8.5% for the last five years, despite the global slowdown. India's economy is amongst the largest in the world on the basis of Purchasing Power Parity. It is today one of the most attractive destinations for business and investment opportunities with the available large manpower base, diversified natural resources and strong macroeconomic fundamentals. In FY2011 - 12, the country attracted FDI of around US$46.8b in various sectors.

India's economy also boasts a robust financial system and deep capital markets. India's demographics are very attractive with approximately 65% of the total population falling in the age group of 15 to 64 years. A comparatively stable government, an open democratic set-up, and a strong and reliable judiciary system, add further advantage to the Indian economy. The country's strong fundamentals such as a growing middle class population, cost competitiveness and strong domestic consumption, coupled with its resilience to counter the challenges of the global economic turbulence, has made it a preferred destination for MNCs from across the world.

With the above perspective in mind, we have developed this guide that will help MNCs simplify the complex decision-making process involved in undertaking foreign operations, which requires an intimate knowledge of a country's commercial climate, as well as recognition of the fact that this climate is continuously evolving.

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

I hope you find this book valuable and insightful. I welcome your comments and suggestions at Tax.Update@in.ey.com

Paresh Parekh
Partner, Tax & Regulatory Services
Ernst & Young India

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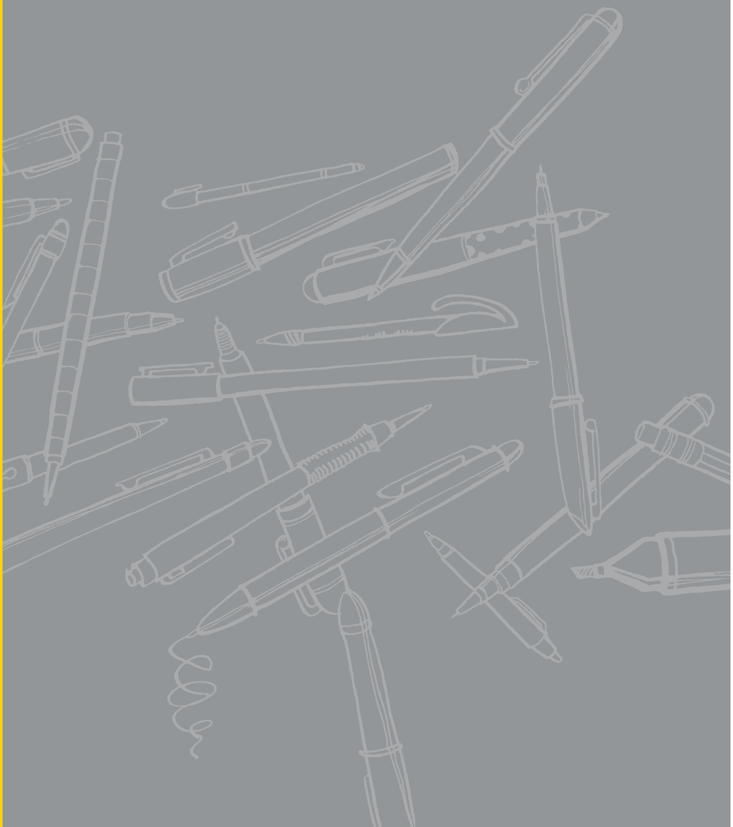
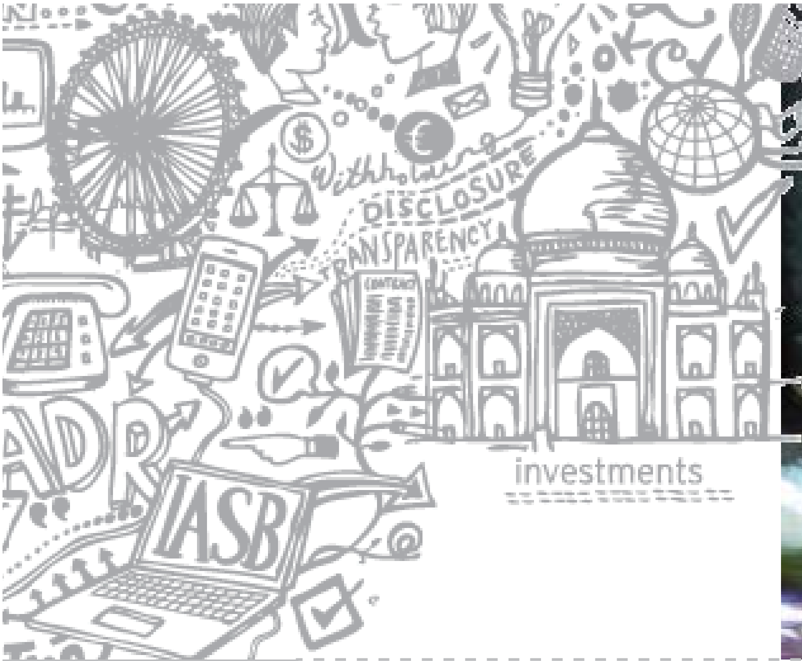
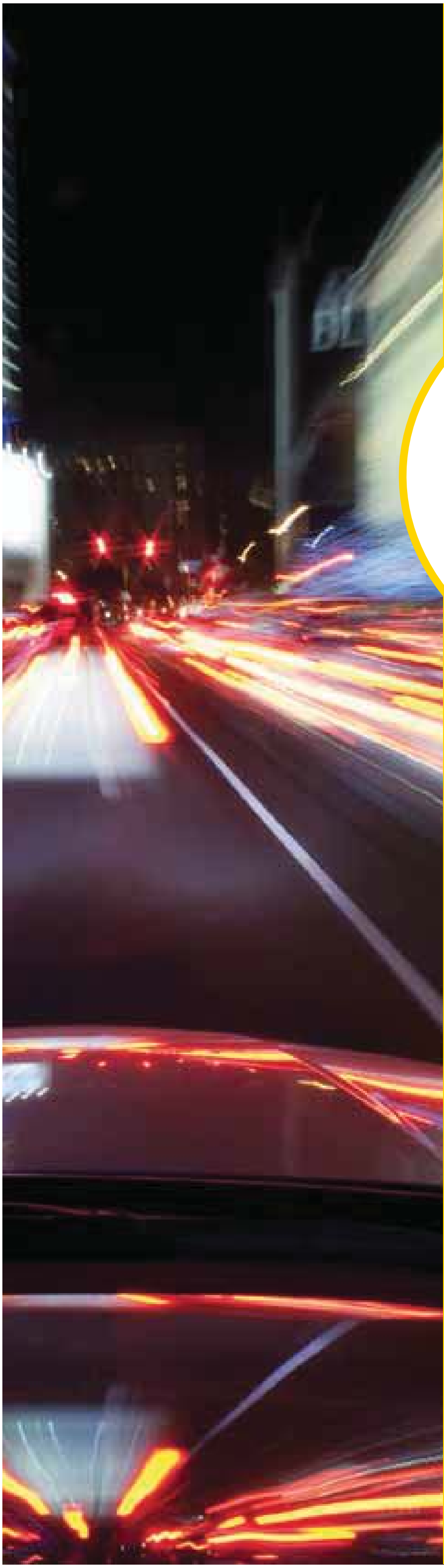




A

India: At a glance



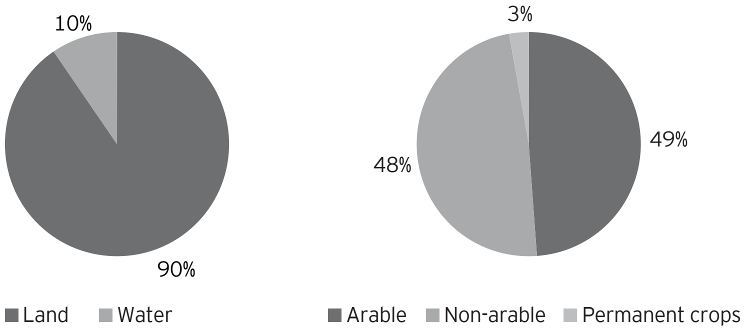
Did you know !

India exports software to around 90 countries. FY12 was a milestone year for the Indian IT-BPO industry, aggregate revenues crossed the US$100 billion mark.

A.1 Geographical profile[1]

Total area: 3.29m sq km

Distribution of total area occupied by India



Source: CIA World Fact book

Capital: New Delhi

India consists of 28 states and seven union territories.

Bordering countries — China, Nepal and Bhutan to the north; Afghanistan and Pakistan to the north—west; Myanmar and Bangladesh to the east; and Sri Lanka to the south.

A.1.1 Geological characteristics

Climate	India's climate can be classified as tropical monsoon in South India and temperate in North India. The country has four seasons — summer (March–June), monsoon (June-September), post-monsoon (October–November) and winter (December- February).
Natural resources	Coal (fourth-largest reserves in the world), manganese, bauxite, iron ore, mica, chromites, diamond, limestone, titanium ore, natural gas, petroleum, and arable land form India's natural resources.

1 "CIA World Fact book," CIA website, https://www.cia.gov/library/publications/the-world-factbook/geos/in.html, accessed 20 July 2012

Flora and fauna	More than 47,000 species of flora and more than 89,000 species of fauna are found here.
Major rivers	Ganga, Yamuna, Brahmaputra, Godavari, Krishna, Cauvery, Narmada and Tapti are the major rivers of the country.
Coastline	The coastline comprises 7,000 km encircling the mainland, the Andaman, Nicobar and Lakshadweep islands.

A.1.2 Transportation

Railways	64,460 km
Roadways	4,200,000 km
Waterways	14,500 km
Number of airports	454

A.2 Demographic profile[2]

Population	1.2 billion (urban: 30%, rural: 70%)
Population growth rate	1.312% per annum
Birth rate	20.6 (births/1,000 population)
Death rate	7.43 (deaths/1,000 population)
Life expectancy	67.14 years
Sex ratio	940 females per 1000 males
Households	246 million

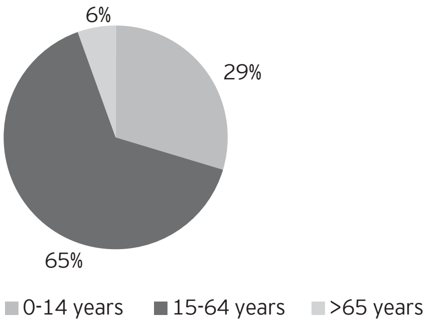
A.2.1 Age structure

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

The median age in the country is around 26.2 years, which is lower than many countries in the world.

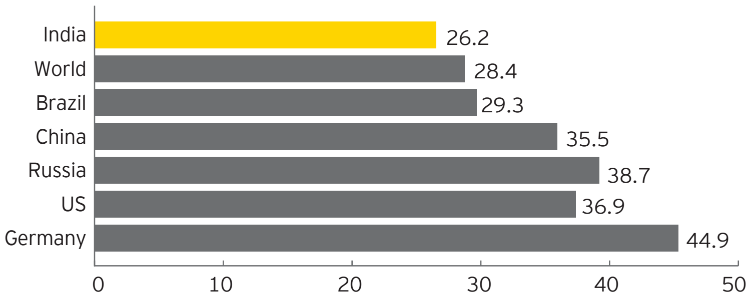
2 "Provisional Population Totals India," Census of India website, http://censusindia.gov.in/2011census/censusinfodashboard/index.html, accessed 20 July 2012

Distribution of population by age- group



Source: CIA World Fact book

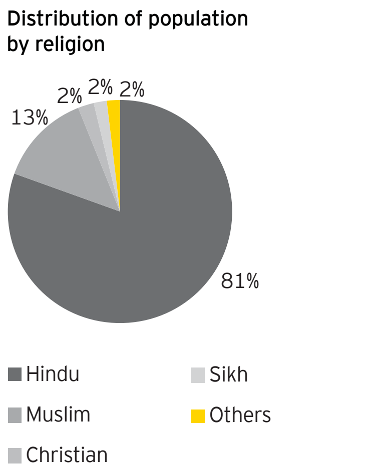
India's median age vis-a-vis other countries (in years)

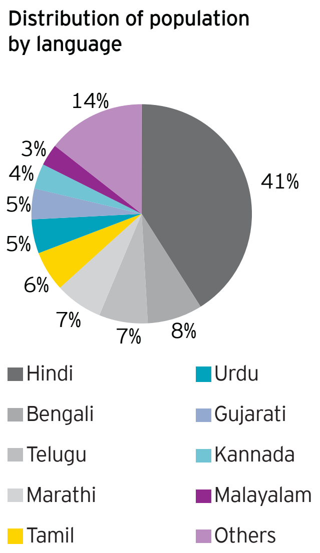


Source: CIA World Fact book

A.2.2 Cultural diversity

Religions	Hinduism, Islam, Christianity and Sikhism are the four main religions followed in India. Other religions include Buddhism, Jainism, Judaism and Zoroastrianism.
Languages	Hindi is the official language of India. Apart from Hindi, there are 21 official languages including Bengali, Telugu, Marathi, Tamil, Urdu, and Gujarati. English is widely used in national, political and commercial communication.
Festivals	India celebrates many festivals including Deepawali, Holi, Guru Nanak Jayanti, Rakshabandhan, Christmas, Janmashtami and Id-ul-Zoha.





Source: CIA World Fact book

A.2.3 Education and labor force[3]

Literacy rate: 74.04% (male: 82.1%, female: 65.5%)

Education: India has one of the largest school-age populations in the world. It has a well-established education system with more than 1.6 million schools enrolling in excess of 240 million students.

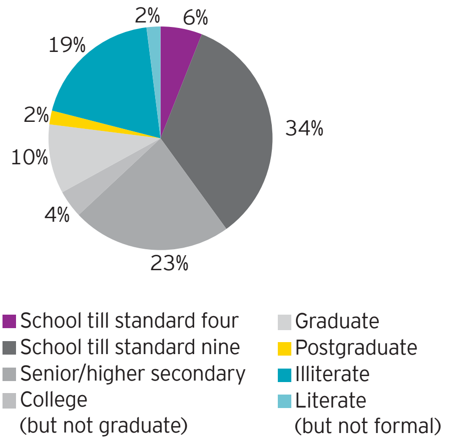
For higher education, India has more than 500 universities, as well as more than 30,000 colleges and 7,000 technical institutions.

Labor force: India's labor force stood at approximately 487.6 million in 2011.

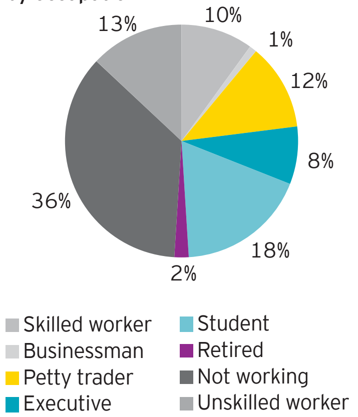
Approximately 4.2 million people are added to India's talent pool every year, with 4 million graduates and 0.26 million post-graduates. Indian Institute of Technology (IIT) and Indian Institute of Management (IIM) are a group of premier institutions in India that offer technical and management degrees, respectively.

3 "Provisional Population Totals India," Census of India website, http://censusindia.gov.in/2011census/censusinfodashboard/index.html, accessed 20 July 2012.

Distribution of population by education



Distribution of population by occupation

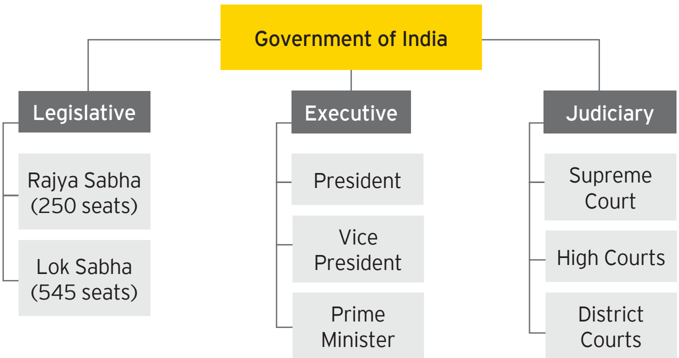


Source: CMIE, MOSPI

A.3 Political profile

India is a secular state and the largest democracy in the world with a parliamentary form of government. The Government of India (GoI), officially known as the Union Government, was established by the Constitution of India in 1950.

The GoI is divided into three distinct but interrelated branches – the legislative, executive and judiciary.



Legislative branch: At the central level, India has a bicameral parliament comprising the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The primary function of the Parliament is to pass laws on matters specified in the constitution to be under its jurisdiction.

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

Executive branch: The Executive arm comprises the President, the Vice President and the Council of Ministers headed by the Prime Minister.

The President: The President of India is the Head of the State and the Commander-in-Chief of the armed forces. The role of the President is primarily ceremonial in nature and he/she acts in accordance with the advice of the Council of Ministers. The current President of India is Shri. Pranab K. Mukherjee.

The Vice President: The Vice President is the ex-officio Chairman of the Rajya Sabha and acts as the President when the latter is unable to discharge his/her duties. The current Vice President of India is Mohammad Hamid Ansari.

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

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

Apart from the Supreme Court, the judiciary consists of high courts at the state level and district courts at the district level.

Political parties of India: Major political parties in India include the Indian National Congress, the Bhartiya Janata Party, Janata Dal, Nationalist Congress Party, The All India Trinamool Congress, the Communist Party of India and the Samajwadi Party..

A.4 Economic profile[4]

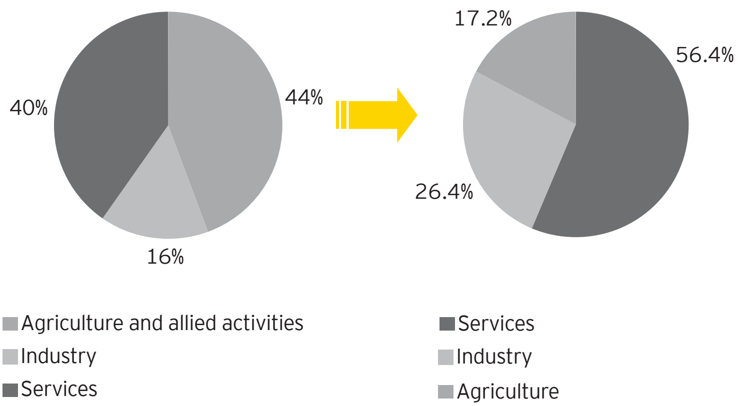
India has seen a systematic transition from being a closed door economy to an open economy since the beginning of economic reforms in the country in 1991. These reforms have had a far-reaching impact and have helped India unleash its enormous growth potential. Today, the Indian economy is characterized by a liberalized foreign investment and trade policy, a significant role being played by the private sector and deregulation.

India has grown to become a trillion dollar economy with a largely self-sufficient agricultural sector, a diversified industrial base and a stable financial and services sector.

India now ranks as the tenth-largest economy in the world and third largest in terms of GDP on PPP basis.

Structural shift from an agrarian to a services-driven economy

Distribution of GDP (1970–71)



Source: CMIE, MOSPI

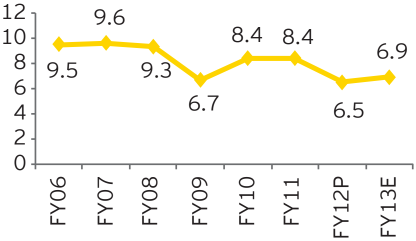
4 "RBI Bulletin - July 2012," Reserve Bank of India website, http://www.rbi.org.in/scripts/BS_ViewBulletin.aspx, accessed 24 July 2012; "FDI Circular - April 2012," Department of Industrial Policy & Promotion website, www.dipp.nic.in/, accessed 24 July 2012; "World Investment Report 2012," United Nations Conference on Trade and Development website, http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/WIR2012_WebFlyer.aspx, accessed 25 July 2012; "Department of Economic and Social Affairs," United Nations website, http://www.un.org/en/development/desa/publications/index.html, accessed 19 July 2012.

GDP: India is well placed on the global map in terms of GDP growth. The country's GDP has been growing at an average rate of 8.5% for the last five years, higher than the world's real GDP growth rate, which averaged at 4.3%. However, real GDP growth declined in FY12 to 6.5% due to reduction in demand and fall in business confidence on account of the global economic slowdown. According to CMIE, the GDP in FY13 is expected to witness a revival in and is projected to grow at 7.3%.

Domestic consumption fuelling economic growth: India continues to benefit from growing domestic demand from a young population, whose consumption is driving the formation of the expanding middle class. By 2025, India is expected to become the world's fifth-largest consuming country from its twelfth position in 2010. As compared to other countries, India has been and continues to be relatively insulated from external shocks due to its strong domestic consumption pattern and savings culture. Savings as a percentage of GDP increased to 32.3% in FY11 from 23.5% in FY02.

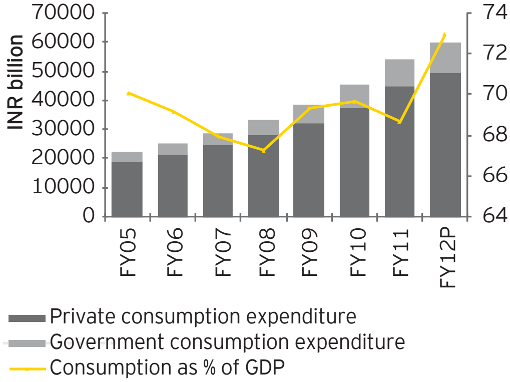
Increasing urbanization and modern technology: Urbanization and innovation have brought about a remarkable change in the lifestyles and consumption pattern of Indians. Private domestic consumption accounts for approximately 55% of the country's GDP and is one of the key factors driving overseas investments in the country.

Real GDP growth rate



Source: Centre of Monitoring Indian Economy and IMF (CMIE); IMF
Source: RBI and CMIE

Trends in public and private consumption



Note: P stands for provisional data

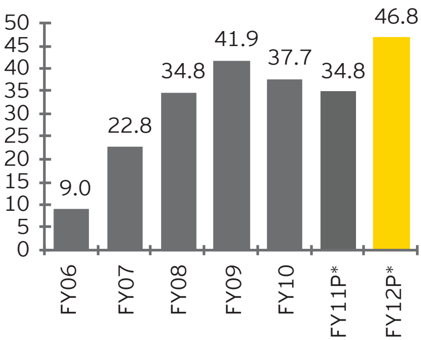
India's competitive position in the world

India's economy has strong fundamentals and is host to several eminent global corporate giants that are leaders in their respective fields. According to the Global Competitiveness Report 2011-12, India ranks at 56 among 142 countries.

The country ranks higher than many countries in key parameters such as market size (3rd) and innovation (38th). It also has a sound financial market, which ranks 21st in the world.

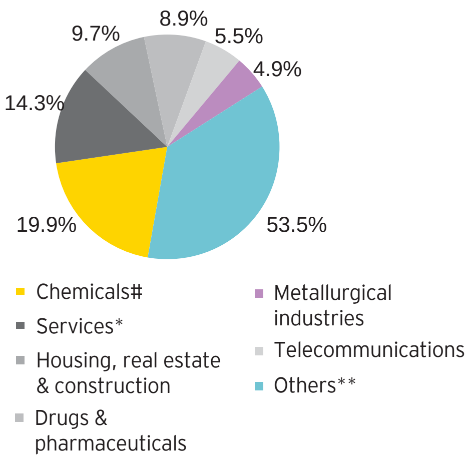
FDI in India: According to UNCTAD's World Investment Prospects Survey 2012-2014, India is the third-most attractive destination for FDI (after China and the US) in the world. Indian markets have significant potential and offer prospects of high profitability and a favorable regulatory regime for investors.

FDI in India (US$ billion)



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

Break up of FDI by sectors (FY12)

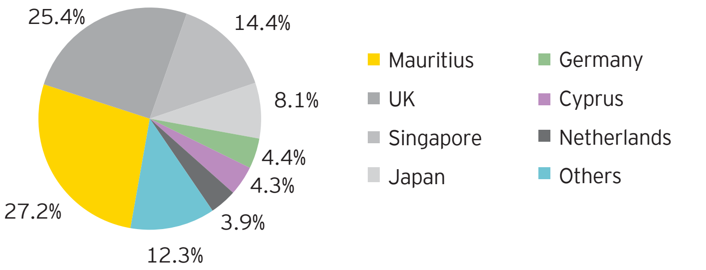


Source: Department of Industrial Policy & Promotion, Government of India. #Chemicals does not include fertilizers; *Services includes financial and non-financial services, **Others includes computer software and hardware, power and automobile industries.

Sectors attracting highest FDI equity inflow: The services sector attracts the highest amount of foreign capital in India, totaling US$32.8 billion between April 2000 and April 2012.

FDI investment countries: Mauritius has been the largest source of FDI inflows into India for many years. Since April 2000, cumulative FDI inflows from Mauritius reached US$64.8 billion in April 2012. Other top investors in the country include the nations from the developed world such as the US, the UK, Singapore, Japan, Germany and the Netherlands.

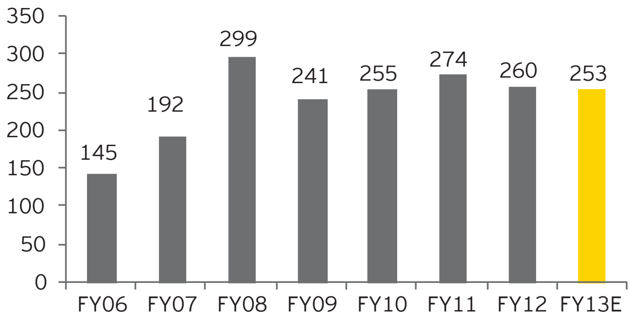
Break up of FDI by countries of origin (FY12)



Source: Department of Industrial Policy & Promotion, Government of India

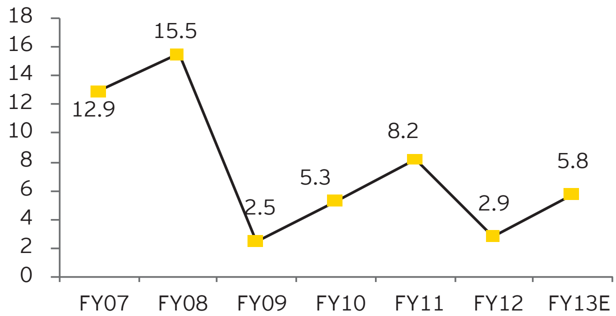
Foreign exchange reserves and industrial production: The country's foreign exchange reserves stood at US$287.4 billion as of 8 June 2012. Industrial contribution to GDP in India stood at US$452 billion in FY12, up from US$424 billion in FY11.

Foreign exchange reserves in India (US$ billion)



Source: RBI and CMIE
Note: E stands for estimated data

Index of Industrial Production (% change)

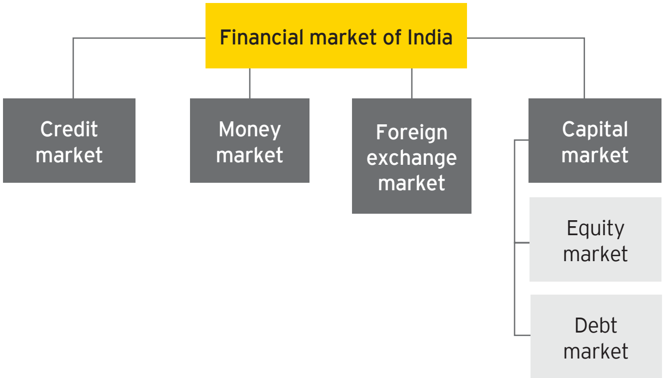


Source: RBI and CMIE
Note: E stands for estimated data

The Industrial sector witnessed a growth of 1.9% in 4Q12. Industrial output is expected to grow by 5.8% in FY13 driven by a revival of mining output and acceleration in the growth of electricity generation. India maintained an average gross domestic capital formation as a percentage of GDP at approximately 32% between FY02 and FY11.

A.4.1 India's Financial Market

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



Reserve Bank of India (RBI): The RBI, established in 1935, is the central bank of India. The RBI regulates the credit market, the money market and the foreign exchange market in India. It is responsible for formulating the monetary policy, issuing currency, prescribing exchange control norms and acting as a banker to other banks.

Credit market

India has a strong credit market with a wide range of financial institutions such as commercial banks, regional rural banks, co-operative banks and non-banking financial corporations. Indian commercial banks have outstanding advances of approximately INR46.1 trillion and deposits of more than INR60.7 trillion, as on 23 March 2012.

The State Bank of India, a public sector bank, is the largest bank in the country.

Type of institution	Total	Grand total
Commercial banks		81
‣ Public sector banks	26	
‣ Private sector banks	21	
‣ Foreign banks	32	
Urban cooperative banks		1,645
Rural cooperative credit institutions		1,674
Rural cooperative credit institutions		95,765

Source: RBI. *as of March 2011

As of FY11, public sector banks dominated the banking industry with 74% of the assets held. However private sector banking is growing at rapidly with 11,602 branches at the end of FY11. The RBI has recently proposed granting new banking licenses, which will promote private banking in the country.

Capital markets

Securities and Exchange Board of India (SEBI) – SEBI, established in 1992, is the regulatory authority for capital markets in India.

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

Recent interventions and outlook:

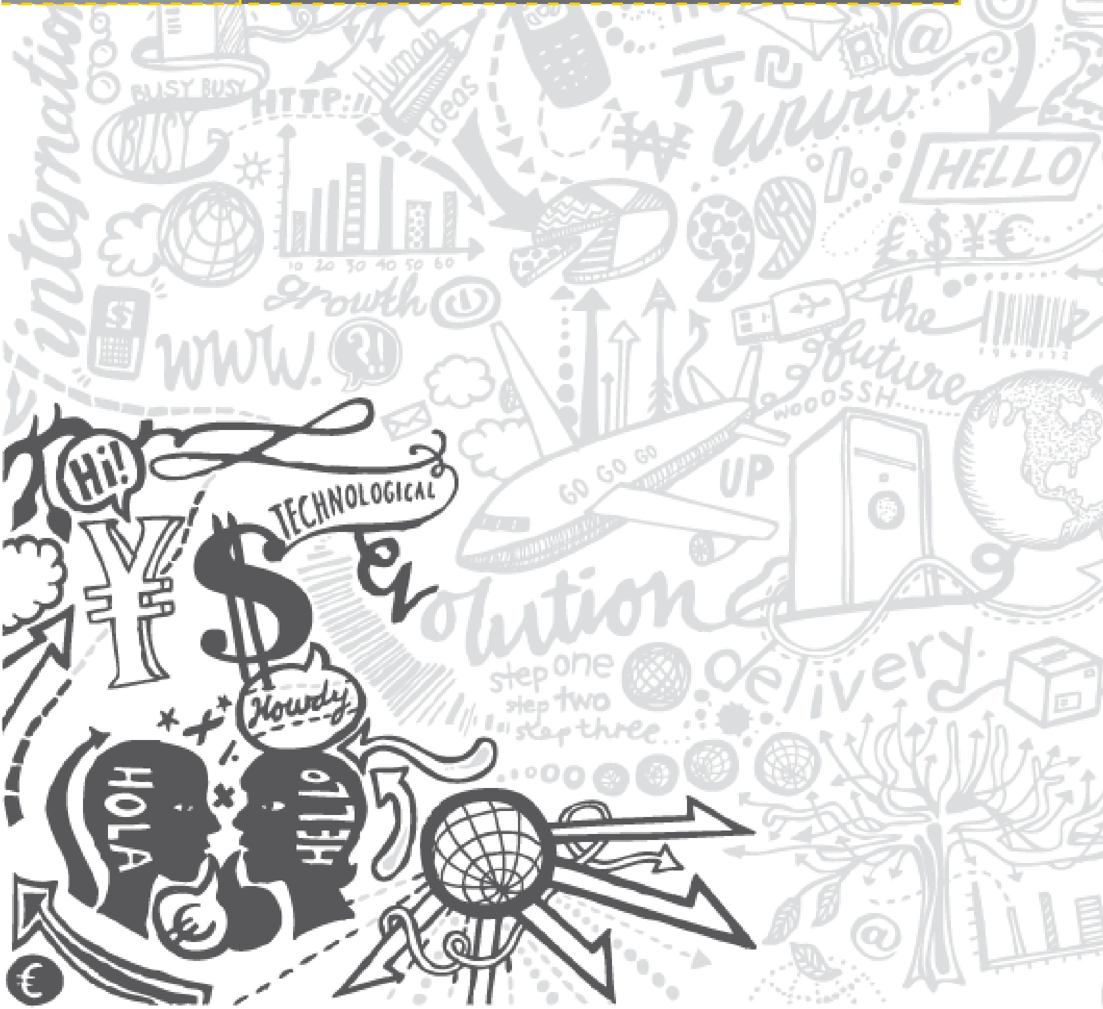
In the past few years, the GoI and the RBI have taken various measures to check excess liquidity/slow growth using its monetary policy.

- In October 2011, the RBI increased the repo rate by 25 basis points (bps) to 8.5%. However, it reduced the repo rate to 8% in April 2012, the first time in three years, to spur growth in the economy hit by high credit costs and weakening global demand.
- The RBI also reduced the CRR by 125 bps in two tranches (50 bps in January 2012 and 75 bps in March 2012) to infuse liquidity into the banking system.
- Nevertheless, during the recent policy review (in March 2012), the RBI sounded a bit cautious on the timing and magnitude of rate cuts in the wake of high crude prices, fiscal slippage and rupee depreciation. The RBI has not changed its policy repo rate and CRR since April 2012 to check inflation in the country.

Outlook: The GoI has also outlined key action points to propel India on to a high growth trajectory

- Target of doubling the merchandise exports by FY14 taking it to US$500 billion
- Provision of INR159 billion in the Union Budget FY13 for banks' recapitalization that will help protect the financial health of public sector banks and financial institutions
- Setting up of an Investment Tracking System to ensure speedy implementation of projects that have been delayed on account of various reasons including security clearances, environmental clearances, and land-related matters.

B Key sectors: an overview



Did you know !

The National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE) are the premier stock exchanges of India. The BSE is the world's largest stock exchange in terms of number of listed companies with more than 5000 companies. NSE is the world's third largest stock exchange in terms of number of transactions.

B.1	**Aerospace & Defence**
B.2	**Automotive**
B.3	**Banking**
B.4	**Capital markets**
B.5	**Life Sciences**
B.6	**Information Technology**
B.7	**Insurance**
B.8	**Media & Entertainment**
B.9	**Mining & Metals**
B.10	**Oil and Gas**
B.11	**Ports**
B.12	**Power and Utilities**
B.13	**Real Estate**
B.14	**Retail and consumer products**
B.15	**Roads and highways**
B.16	**Telecommunications**

B.1 Aerospace and defence

The Aerospace and defence industry is an emerging sector in India with the Indian military expected to spend roughly US$80–100b over the next five to seven years. It ranks among the top ten countries in the world in terms of military expenditure. India is the largest importer of conventional defence equipment in the world. About 65%–70% of India's defence requirement is imported from global aerospace and defence companies. India's defence spend has been increasing over time in the light of volatile neighborhood, internal security issues and the need for upgrading/replacement of legacy Russian origin equipment.

Currently, India's national budget for 2012–13 pegged the defence outlay at US$35.16b. Of this, capital expenditure, which primarily caters to acquisition of defence hardware and modernization requirements of defence services, accounts for US$14.47b. Of this, the Indian army has the largest share — of more than 50% — followed by the Indian Air Force and the Indian Navy. Capital expenditure is expected to grow at the rate of 10% per annum, which is significantly positive as compared to other global economies. The revenue expenditure, which mainly accounts for the "operating expenditure," is pegged at US$–20.70b.

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

Regulatory scenario

a. Foreign direct investment

The policy for FDI in the defence sector was notified in 2001, wherein the defence industry was opened up to 100% for Indian private sector participation, with FDI permissible up to 26% — both subject to licensing and GoI approval.

b. Defence procurement procedures

The Defence Procurement Procedures (DPP) essentially lays down the procurement procedure of all capital acquisitions (except medical equipment) undertaken by the Ministry of Defence, the Defence Services and Indian Coast Guard both from indigenous sources and imports. The DPP ensures expeditious procurement of the approved requirements of the Indian Armed Forces in terms of capabilities sought and time frame prescribed by optimally utilizing the allocated budgetary resources. The current version is DPP-2011,which was released on 7 January 2011.

c. Offset policy

In its quest for self reliance in defence production, the GoI has been continuing its efforts to indigenize the production of defence equipment. One of the major initiatives by the GoI in this regard was the introduction of the "offset policy" as part of DPP-2005. The offset policy provides for a minimum offset of 30% in case of contract with foreign company where the contract is valued at more than INR3 billion (US$55m). The Defence Acquisition Council may, after due deliberation, also prescribe varying percentages above 30% or waive off the requirement for offset obligations in very special cases. Offset Policy is applicable for all capital acquisitions categorized as:

- "Buy (Global)",i.e., outright purchase from foreign or Indian vendor. Procurement offset is not applicable in case of a bid from an Indian firm offering an indigenously developed product (with at least 50% of indigenous content in the product);
- "'Buy and Make with Transfer of Technology",i.e., purchase from foreign vendor followed by licensed production.

Offset obligations can be discharged by direct purchase of, or executing export orders for, eligible products and components manufactured by, or services provided by, Indian industries. Offset obligations can also be discharged through direct foreign investment in Indian industries for industrial infrastructure for services, co-development, joint ventures, and co-production of eligible products and components. The ambit of the offset policy has been enlarged vide DPP in 2011 by including civil aerospace, internal security and bringing training in the list of eligible products and services.

Further, the defence procurement policy also allows banking of offset credits. If the vendor is able to create more offsets than his obligations under a particular contract, surplus offset credits can be banked.

d. Industrial licensing

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

License applications are considered and licenses provided by the Department of Industrial Policy and Promotion, Ministry of Commerce, in consultation with the Ministry of Defence.

Recent developments and industry outlook

The Indian defence budget is growing in double digits and India has emerged as one of the most promising markets for global aerospace and defence companies. There has been an increasing focus on moving on from a buyer-seller to a collaborator, joint developer etc. The GoI now wants to ensure that its spending power leads to India gradually becoming a net exporter of defence equipment.

B.2 Automotive

The Indian automobile industry is estimated to have a total turnover of US$74b for the 12 month period ending 31 March 2012.

Despite global economic slowdown, the Indian automotive sector continued on an upward trajectory with a double-digit growth in FY12. Staying among the top-three markets across a number of vehicle segments, India is the world's largest three-wheeler, second-largest two-wheeler and heavy commercial vehicle and the third-largest light commercial vehicle market.

The country is rapidly being established as a small vehicle product development hub enabled by the large volumes needed for the domestic market and the ability to reduce costs through frugal engineering and manufacturing. There are as many as 12 multi-national players in the original equipment manufacturer (OEM) segment in the Indian market, and a number of expansion or new projects have been announced during 2011–12. Further its proximity to the South East Asian and African markets and well connected ports makes it an ideal location to develop as a small vehicle manufacturing hub. Exports of vehicles have grown at a CAGR of 25% over the period 2007–12 with 2.9m units exported in FY12, with more than half a million PVs and 1.95m two wheelers being exported to various parts of the world in FY12.

Regulatory scenario

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

Among policy drafts, on the anvil is India's Science, Technology & Innovation Policy 2013, in which, amidst other things, contributions are being sought for focus on engineering and advanced manufacturing for the automotive manufacturing industry to help in fueling and sustaining future growth.

At the beginning of FY13, GoI unveiled a seven-point strategy to boost exports, including extension of import-tax waiver and interest subsidy, aimed at incentivizing domestic manufacturing while encouraging import substitution. It also extended the interest subsidy scheme on labor-intensive exports by a year to March 2013 thereby benefitting automotive vehicle and component companies across India.

Among alternate technologies, electric vehicle sales in India took a significant hit due to the policy vacuum from the government where a hefty subsidy scheme offered by the Ministry of New and Renewable Energy has lapsed six months before the rollout of a new, improved policy drafted by the National Council of Electric Mobility (expected somewhere around October 2012). The impact was felt across two-wheeler and four-wheeler segments, with sales dropping by as much as 50%.

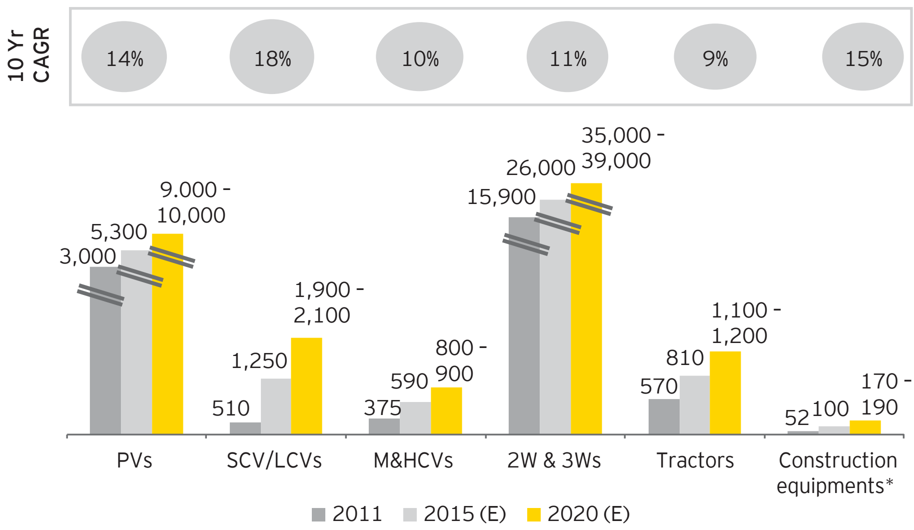
India's New Manufacturing Policy announced in 2011 aims to increase the share of manufacturing to 25% of the GDP from its current level of 16% and identifies the automotive industry as one of the focus sectors with competitive advantage.

Recent developments and industry outlook

The entry level, sub-1500cc segment continues to form the largest share of passenger vehicle sales, selling more than 1.1m vehicles for the year. Being one of the most price-sensitive segments, the growth was lower due to increasing petrol prices and interest rates. The year also saw rapidly shifting consumer preference toward diesel vehicles, leading to OEMs introducing diesel products across product segments. The demand for diesel vehicles grew to the extent of creating long waiting periods for diesel vehicles, as well as create idle inventory for petrol models.

In the face of slowing demand, overcapacity was seen building up across the industry; however, given the emerging dual focus on servicing the domestic market and at the same time building export capabilities, near term excess capacity was seen as unavoidable. For a price aggressive market such as India, exports enabled scale for automotive manufacturers to compete effectively. India's emergence as a vehicle and component development continued to be on the automotive industry's priority list for the year FY12 with emphasis on co-designing and co-development.

Domestic vehicle production forecasts ('000 units)



Source: ACMA - EY Vision 2020 Study, EY analysis

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

- The passenger car segment in India is expected to grow at upwards of 12% in FY13. After producing more than 3.1m passenger cars in FY12, the Indian market is looking forward to the launch of almost 50 new models in the coming year across sub-segments.
- Society of Indian Automotive Manufacturer's (SIAM) predicts the commercial vehicle (CV) segment to grow between 9% and 11% in FY13. The CV growth is expected to be propelled by strong demand in the Light Commercial Vehicle segment with the increasing acceptability of the hub-and-spoke model and inter-city transportation.

The largest contributor to the automobile sales, the two-wheeler segment in India is expected to grow at the rate of 11% to 13% in the year FY13. Led by motor cycles, the segment witnessed more than 15.4m two-wheelers being produced in India in FY12.

B.3 Banking

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

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

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

The Indian banking sector broadly comprises three types of commercial banking entities, based on the nature of their ownership. These are public sector banks, private sector banks and foreign banks. The public sector banks still continue to dominate the banking space with a deposit market share of more than 75%. Despite all efforts undertaken post-1990s to boost banking in India, the banking sector penetration remains low.

Apart from commercial banks, measures have been taken to strengthen urban co-operative banks (UCBs), non-banking financial companies (NBFCs) and micro-finance institutions (MFIs). Alongside reforms in various segments of the financial system, the focus on financial inclusion continues.

The banking sector intermediation, as measured by the total loans as a percentage of GDP, was around 30% in 2010. There is significant scope to drive financial inclusion in India, especially in rural areas.

Regulatory scenario

Regulator: The sector is regulated by the RBI. Key enactments governing this sector include the Banking Regulation Act, 1949; Reserve Bank of India Act, 1934; and the Companies Act, 1956 ("the Cos Act"). The RBI has been reviewing and refining its regulatory and supervisory policies to enable a strong capital base, effective risk management and best corporate governance standards in the banking sector. In recent times, the focus has also been on improving credit delivery, increased vigilance, monitoring salaries of key personnel, customer service and promoting financial inclusion.

FDI policy in banking: The total aggregate foreign investment in private banks from all sources (FDI, FII and NRI) is limited to 74% with a limit of 10% for individual foreign institutional investors (FIIs) with the aggregate limit for all FIIs restricted to 24%, which can be raised to 49% with the approval of the board/general body. The FDI norms are not applicable to public sector banks where the FDI ceiling is still capped at 20%.

Capital requirements: Basel III stipulates that all banks should attain capital to risk (weighted) assets ratio (CRAR) [inclusive of Capital Conservation Buffer (CCB)] of 11.50% and common equity tier-1 CRAR (inclusive of CCB) of 8% by 31 March 2018 [CRAR (inclusive of CCB) of 9.625% and common equity tier-1 CRAR (inclusive of CCB) of 6.125% to be achieved by 31 March 2015]. Domestic and foreign banks have been allowed by RBI to augment their capital funds by issuing certain hybrid instruments.

Developments in the banking sector and industry outlook

- **Financial inclusion to drive banking growth:** In pursuance of the announcement made in the Monetary Policy Statement of April 2010, State Level Bankers' Committees (SLBCs) had identified certain unbanked villages with a population of 2,000. Under this policy, banks have been able to cover 99.7% of the unbanked villages identified by the RBI. The RBI, in its annual monetary policy, has now mandated SLBCs to prepare a roadmap to cover all unbanked villages with a population of less than 2,000.

  The RBI extended the scope of the business correspondent (BC) model to allow listed companies with large distribution network in rural areas to act as BCs, which marked the entry of telecom operators and large FMCG companies in the BC model.

- **Focus on mobile banking to drive penetration of banking services in India:** Since only 40% of the adult population in India has access to banking services, while approximately 70% own a mobile connection, the gap offers a significant opportunity for India's commercial banks. Several leading banks have tied up with telecom operators and handset manufacturers to provide mobile banking facility.

  In order to further augment the facility, the RBI recently removed the ceiling of INR 50,000 per customer per day mandated in 2009 under the guidelines on mobile banking. Given this, banks are now free to place per transaction limits based on their own risk perception with the approval of its Board.

- **Granting of additional banking licenses:** During the Union Budget of 2010–11, the GoI, in consultation with the RBI, announced that it may consider granting additional banking licences to private sector players. Pursuant to this announcement, the RBI issued a discussion paper requesting public comments on minimum capital requirements of new banks, promoter's participation, foreign shareholding, eligibility of industrial houses and NBFCs.

Detailed discussions on the above issues have been held by various industry bodies. Based on the comments provided, the GoI released the revised draft guidelines for granting banking licenses.

- **Setting up of electronic payments systems:** National Payments Corporation of India has set up an Inter-bank Mobile Payment Service (IMPS) and is in the process of rolling out an indigenous payments network, "RuPay". These initiatives are likely to reduce the costs of financial transactions through banks and make the process of payment transfer quicker.

Revision in rules to set up foreign banks in India: In 2005, the RBI announced a roadmap for the set up of foreign banks in India. The roadmap inter alia proposed two phases to achieve a wholly owned subsidiary (WOS) for foreign banks in India wherein, during the first phase, foreign banks were permitted to establish presence in India by way of setting up a WOS or conversion of the existing branches into a WOS. The second phase proposed to accord full national acceptance to WOS structures set up by foreign banks in India. As a key step toward implementing the roadmap, the RBI issued a discussion paper in January 2011. The discussion paper lays down the intent behind adopting WOS as the preferred structure, proposed framework to make this structure operational along with incentives to existing/new banks to set up a WOS vis-a-vis a branch.

Banking Laws Amendment Bill, 2011: The Banking Laws Amendment Bill, 2011 (Bill) was recently cleared by the Cabinet Committee on Economic Affairs (CCEA). The key changes proposed by the Bill are:

- The CCEA has approved increasing the cap on shareholders' voting rights from 10% to 26%.
- The RBI has been empowered to supersede the bank board in case of any irregularities identified.

B.4 Capital markets

Capital markets

The Indian capital markets have made significant progress over the last decade, which spans several dimensions of development such as accessibility, regulatory framework, market infrastructure, transparency, liquidity and the types of instruments available. All these factors have culminated in the emergence of a much deeper and resilient primary as well as secondary capital markets in India.

Regulatory scenario

SEBI was established as a statutory body in 1992 to achieve the following:

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

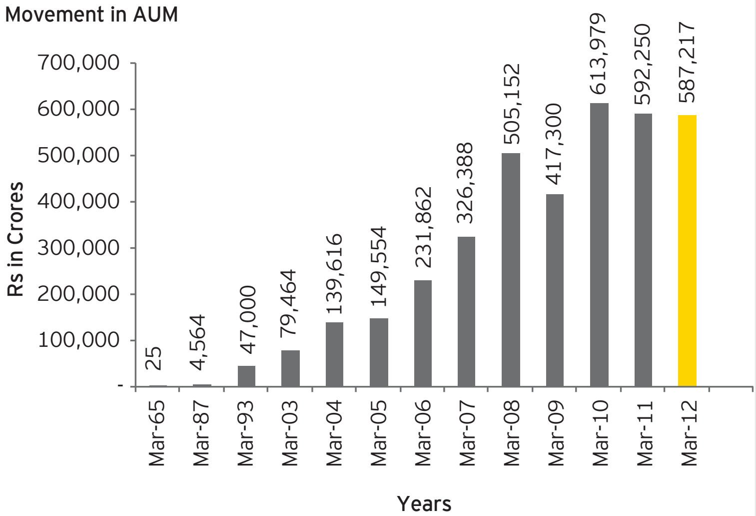
The SEBI has proactively introduced measures to improve the integrity of the secondary as well as primary markets through better governance. Additionally, the SEBI has introduced reporting requirements for various capital market participants to enable increased transparency.

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

Mutual funds

The entry of private sector mutual funds in 1993 has given the Indian retail/corporate investors a wide choice of fund houses. The number of SEBI registered asset management companies in India stood at 51.

The chart below indicates the movement in assets under management (AUM) over the years:



Movement in Assets Under Management

Qualified foreign investors (QFIs)

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

Foreign Institutional Investors

The flow of funds from FIIs has given an impetus to the Indian capital markets. In addition, the sustained nature of FII investments has reiterated their belief in India's growth story, thus sending strong positive signals about the prospects of India as an investment destination to the global investment community.

The number of SEBI registered FIIs and sub-accounts stood at 1,767 and 6,278 respectively at the end of December 2011. Net FII investment in 2011–12 amounted to approximately INR 937b (US$17b approx) as compared to INR1464b (US$26.56b approx) in 2010–11.

The Indian regulatory regime has adopted a cautious approach toward allowing foreign institutions to invest in the country. Over the years, the regulations have been liberalized gradually across several dimensions such as investment limits, eligibility criteria and the instruments permitted for FII investments.

Of late, infrastructure is one sector where the regulations pertaining to foreign investment have been notably relaxed. The overall limit for foreign investments in long-term infrastructure debt is US$25b. Of the same, US$22b is for FII investments and the balance US$3b pertains to QFI investments.

Venture Capital Funds (VCF)

The visibility of VCF has increased over the last couple of years with several large funds looking actively at investments in India.

The number of SEBI registered VCFs and Foreign Venture Capital Investors (FVCIs) stood

at 205 and 164, respectively during 2011–12. Investments by VCFs and FVCIs in venture capital undertakings stood at approximately US$10.78b as at 31 March 2011.

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

Alternative Investment Funds (AIF)

On 21 May 2012, the SEBI has notified the SEBI (Alternative Investment Funds) Regulations, 2011 (AIF Regulations). AIFs are segregated into Category I, II and III. All AIFs are required to mandatorily seek registration in one of the categories. The existing VCF Regulations have been repealed on notification of the AIF Regulations. The funds registered as venture capital funds under the VCF Regulations will continue to be regulated by the said regulations till the existing fund/scheme is wound up. Such funds/schemes will not be allowed to launch any new scheme or increase the targeted corpus after the notification of the AIF Regulations.

Commodities markets

The commodities market is another rapidly growing market in India. They were highly unorganized till 2003, when the first national level commodity derivatives exchange, National Multi Commodity Exchange of India, was permitted to commence operations. Currently, there are five national and 16 regional commodity exchanges in India (Source – Forward Market Commission website – www.fmc.gov.in).

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

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

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

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

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

Foreign investment is permitted in commodity exchanges, subject to a composite ceiling

of 49%, with a FDI limit of 26% and FII limit of 23%. FDI is allowed with specific approval of the FIPB and FII purchases in equity of commodity exchanges are restricted to the secondary markets only.

Derivative markets

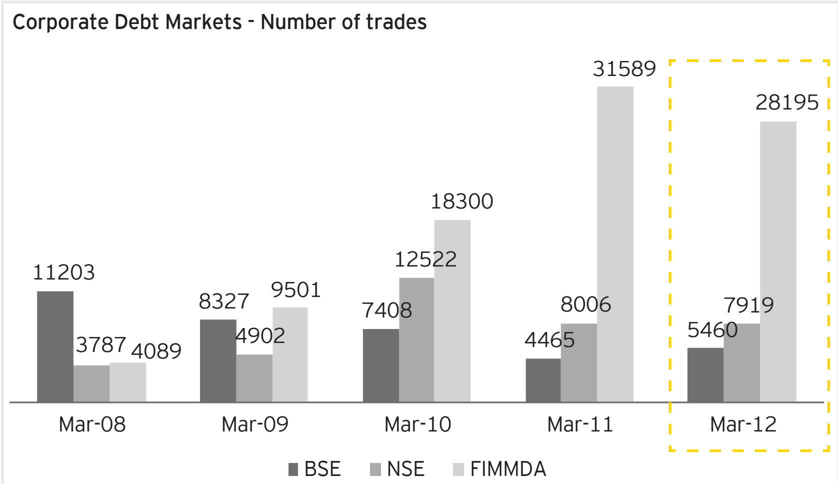
The market for exchange-traded derivatives has evolved rapidly in India over the last decade and the country today boasts of one of the most active derivatives markets across the globe. In fact, the turnover of derivatives trading on the National Stock Exchange of India (NSE), which increased from US$0.55b in 2000–01 to US$6,128.21b in 2011–12, has already surpassed that of the equity markets. Index options are the most popular type of derivative instrument and account for the highest share of the total derivatives turnover.

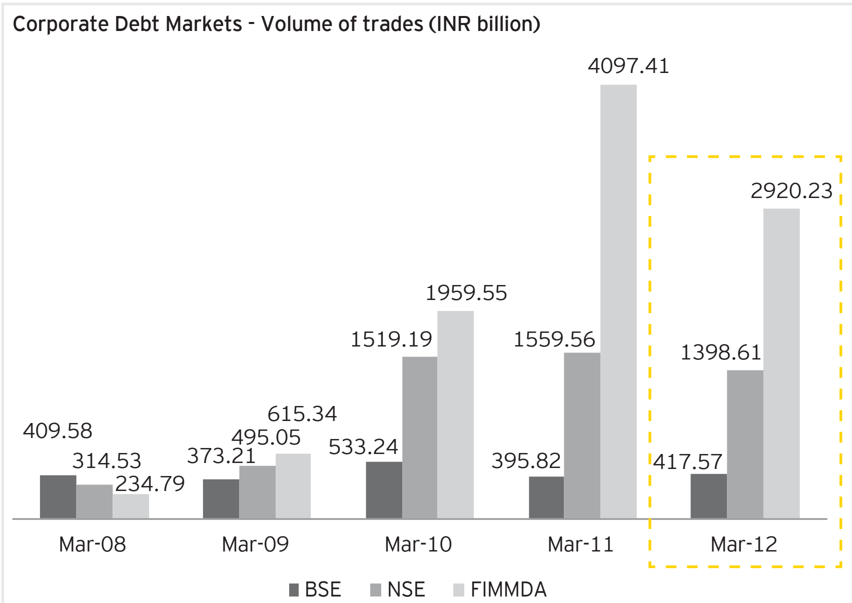
Credit default swaps (CDS) for corporate bonds became the latest derivative instrument permitted in India when the recent guidelines for CDS issued by the RBI became effective from 24 October 2011. The RBI has included EXIM, NABARD, NHB and SIDBI as users permitted to participate in the CDS market.

Debt markets

The debt market in India, especially the corporate bond market, has not kept pace with the growth of equity markets in India.

Some of the reasons for the slow growth of corporate debt markets in India include poor transparency, absence of pricing of spreads against the benchmark yield curve, an inadequate supply of paper from corporate entities, large issuance of government securities and low-risk subordinated debts by banks.





However, the government has been taking initiatives for the development of a robust corporate bond market in India. The move to introduce CDS for corporate bonds, as mentioned above, is a step in that direction.

B.5 Life sciences

The Indian life science market is witnessing dynamic changing trends such as large acquisitions by multinational companies and increasing investment by domestic and international players in India, deeper penetration into the rural markets, growth and availability of health care.

Industry overview and outlook

Pharmaceutical formulations and bulk drugs

The Indian pharmaceutical market is highly fragmented with the top 10 players accounting for nearly 38% of total sector revenues, which was estimated at US$21.5b in 2011. The pharmaceutical market is expected to grow at a CAGR of 14.3% to reach US$36.7b by 2015

India accounts for nearly 8% of global pharmaceutical production[1] which makes it the third- largest pharmaceutical manufacturer worldwide[2].

Pricing is a critical aspect for pharmaceutical companies operating in India. The number of drugs in the essential drugs list has increased from 74 to 348. This price cap will potentially impact the revenues of pharma companies operating in India.

Nearly 18 of the top 20 global pharmaceutical companies have set up their subsidiaries in India[3]. They also enter in marketing arrangements with domestic players to expand the reach of their products.

The share of formulations and Active Pharmaceutical Ingredients (APIs) stood at 82:18 in FY11 as against 69:31 in FY07[4].

1 "India- World Pharmaceuticals Market- Q1 2012," Epsicom, 16 July 2012, via ISI Emerging Markets.

2 "A brief report on pharmaceutical industry in India, March 2012," CCI website, http://www.cci.in/pdf/surveys_reports/indian-pharmaceuticals-industry.pdf, accessed 17 July 2012.

3 "Top line market data," IMS Health website, http://www.imshealth.com/deployedfiles/ims/Global/Content/Corporate/Press%20Room/Top-Line%20Market%20Data%20&%20Trends/2011%20Top-line%20Market%20Data/Top_20_Global_Companies.pdf, accessed 19 July 2012.

4 "Initiating coverage on Indian Pharmaceutical sector," Spark Capital Advisors (India) Pvt. Ltd., September 2011, via ThomsonONE.com

The domestic pharmaceutical market amounted to US$14.3b in 2011. The market has grown at 16.3% y-o-y in 2011[5]. India's total pharmaceutical exports were estimated at US$7.2b in 2011, growing at a CAGR of 18.1% between 2007 and 2011[6]. The US is the largest market for India's pharmaceutical exports[7]. The exports are expected to reach US$16.7b by 2015[8].

India accounts for more than 45% of the world's requirement of bulk drugs[9].

Biotechnology

The Indian biotechnology sector is largely dominated by domestic players with only four foreign players featuring in the list of top-20 biotech companies in FY11[10].

The sector is classified into bio-pharma, bio-services, bio-agri, bio-informatics and bio-industrial segments. The Indian biotech industry amounted to nearly US$3.7b in FY11, growing at a y-o-y rate of 21.5%[11]. Bio-pharma is the largest industry segment, accounting for nearly 62% of total revenues, followed by the bio-services (19%) and bio-agri (14%) segments[12]. Prospects for the biotechnology equipment market in India are seemingly bright. The Indian biotech industry is projected to reach US$10b by 2015[13].

5 "Pharmaceuticals," Indian Brand Equity Foundation website, http://www.ibef.org/download/Pharmaceuticals50112.pdf, accessed 17 July 2012.

6 "Pharmaceuticals," Indian Brand Equity Foundation website, http://www.ibef.org/download/Pharmaceuticals50112.pdf, accessed 17 July 2012.

7 "India pharma exports to double," Hindustan Times website, http://www.hindustantimes.com/business-news/WorldEconomy/India-pharma-exports-to-double/Article1-766513.aspx, accessed 17 July 2012.

8 "Pharmaceuticals," Indian Brand Equity Foundation website, http://www.ibef.org/download/Pharmaceuticals50112.pdf, accessed 17 July 2012.

9 "History," Bulk Drug Manufacturers Association (India) website, http://www.bdmai.org/history.php, accessed 17 July 2012.

10 "BioSpectrum ABLE Biotech industry survey 2011," ABLE India website, http://www.ableindia.in/pdf/9th_survey.pdf?bcsi_scan_debb0e326e6a7dd8=0&bcsi_scan_filename=9th_survey.pdf, accessed 16 July 2012.

11 "BioSpectrum ABLE Biotech industry survey 2011," ABLE India website, http://www.ableindia.in/pdf/9th_survey.pdf?bcsi_scan_debb0e326e6a7dd8=0&bcsi_scan_filename=9th_survey.pdf, accessed 16 July 2012.

12 "BioSpectrum ABLE Biotech industry survey 2011," ABLE India website, http://www.ableindia.in/pdf/9th_survey.pdf?bcsi_scan_debb0e326e6a7dd8=0&bcsi_scan_filename=9th_survey.pdf, accessed 16 July 2012

13 "Biotechnology," Indian Brand Equity Foundation website, http://www.ibef.org/industry/biotechnology.aspx, accessed 16 July 2012.

Exports accounted for a 51% share of the total biotech sector, with bio-pharma (52% of the total segment sales) and bio-services (92%) accounting for a major share of revenues from exports[14].

A new autonomous body called the National Biotechnology Regulatory Authority is being established under the draft Biotechnology Regulatory Authority of India Bill, 2012.

Contract Research and Manufacturing Services (CRAMS)

The Indian CRAMS market was estimated at US$3.8b in 2010, growing at a CAGR of nearly 51% from 2007 to 2010[15] and is expected to reach US$7.6b, with a CAGR of 41.4% from 2010 to 2012.

With reducing R&D productivity, increasing costs of manufacturing and research, and shrinking pipelines, MNCs are engaging themselves in outsourcing manufacturing and drug discovery to low cost destinations such as India.

India's cost efficiency, skilled manpower and growing technical capabilities are some of the factors driving the growth of CRAMS in India.

Contract research

The contract research market was estimated at around US$1.5b in 2010, growing at a CAGR of 65% from 2007–2010. The Indian contract research market accounts for 6% of the global contract research market[16].

Contract manufacturing

The contract-manufacturing market was estimated at nearly US$2.3b in 2010, growing at a CAGR of 51% during 2007–2010 and is projected to reach in the range of US$7–8b by 2015[17].

14 "BioSpectrum ABLE Biotech industry survey 2011," ABLE India website, http://www.ableindia.in/pdf/9th_survey.pdf?bcsi_scan_debb0e326e6a7dd8=0&bcsi_scan_filename=9th_survey.pdf, accessed 16 July 2012.

15 "CRAMS India: Overview and outlook," ICRA website, www.icra.in/Files/Articles/CRAMS%20Note,%20Overview%20and%20Outlook.pdf, accessed on 12 July 2012.

16 "CRAMS India: Overview and outlook," ICRA website, www.icra.in/Files/Articles/CRAMS%20Note,%20Overview%20and%20Outlook.pdf, accessed on 12 July 2012

17 "Healthy prospects for Indian CRAMS sector supported by Custom Manufacturing and increasing presence in Contract Research," ICRA website, www.icra.in/Files/Pressrelease/PR-2011-(CRAMS).pdf, accessed 12 July 2012.

The market represents nearly 5.5% of the total global market[18] India has more than 200 plants that have been approved by the United States Food and Drug Administration (USFDA) and the UK Medicines and Healthcare Regulatory Agency. Additionally, India accounts for nearly one-third of a total of 431 Abbreviated New Drug Applications (ANDAs) approved by the USFDA in 2011[19]

Medical devices and equipment

The Indian medical devices industry is growing significantly every year and it ranks amongst the top-20 in the world. It is the fourth-largest medical device industry in Asia after Japan, China and South Korea

The Indian industry was valued at US$2.4b in 2010, growing at a CAGR of 12% for 2007–2010. However, the size of the industry is still small as per capita spending is just around US$2 in 2010. The industry is forecasted to reach US$4.8b by 2015, growing at a CAGR of 15.6% (2009–2015).

Medical devices sales in the country are steadily improving as a function of overall health care expenditure. In 2010, medical device sales contributed nearly 4.4% of total health care expenditure in the country. It is projected that the sales of medical devices will increase to 4.5% of total health care expenditure in the country by 2015. The private sector contributed nearly 77.4% to health care expenditure in 2010.

Orthopedic implants are expected to grow at a CAGR of 18.7% between 2009 and 2015. Dental products and consumables are expected to grow at CAGRs of 17.4% and 17.1%, respectively during the same period. Growing private sector participation in health care and the GoI's initiatives are likely to drive the growth of the industry in the near future, especially in rural areas. In addition, the rising per capita income of people in the country will enable the doubling of per

18 CRAMS India: Overview and outlook," ICRA website, www.icra.in/Files/Articles/CRAMS%20Note,%20Overview%20and%20Outlook.pdf, accessed on 12 July 2012.

19 "Indian pharma companies obtains 144 ANDA approvals from US FDA in 2011," Pharmabiz website, http://pharmabiz.com/NewsDetails.aspx?aid=66831&sid=2, accessed 12 July 2012

20 "India's Medical Device Regulation Bill Not Dead Yet", Medtech Insider, http://medtechinsider.com/archives/22988, accessed 25 July 2011

capita spending on medical devices by 2015 from US$2 currently. Moreover, medical device manufacturers are eyeing the opportunity presented by the growth witnessed in medical tourism.

In light of these factors, the medical devices market in India is expected to offer a competitive environment to both SME companies and foreign multinational entities. MNCs are expected to continue to dominate the medical devices industry in India, especially the high-technology product category, due to their scale of operations and extensive service networks. The domestic industry is expected to meet low- to mid-technology product demand.

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

Clinical trials

The size of the Indian clinical trials market was around US$400m (INR 23.1b) in 2011[21]. India's share of this market is expected to increase from 2.1% in 2011 to 2.9% in 2015 to reach almost US$1b (INR 43.9b)[22]. The number of new trials registered in the country declined from 365 in 2010 to 230 in 2011, losing to competition from countries such as China and Eastern European countries[23].

Foreign CROs undertake Phase II and Phase III clinical trials whereas the Indian players specialize in conducting bio-availability, bio-equivalence (BA/BE) studies and data management.

Mandatory requirement to register clinical trials with Clinical Trials Registry-India (CTRI) and the country's increasing compliance with WHO Good Clinical Practice (WHO-GCP) norms are some of the key drivers for the future[24].

21 "India losing out on clinical trial biz pie," Financial Express, 9 July 2012 via Factiva, ©2012 Indian Express Online Media Pvt. Ltd.

22 "Clinical trials market -India," Netscribe Pvt. Ltd., April 2012, via ISI Emerging Markets

23 "Clinical trials market -India," Netscribe Pvt. Ltd., April 2012, via ISI Emerging Markets

24 "Clinical trials market -India," Netscribe Pvt. Ltd., April 2012, via ISI Emerging Markets

Regulatory scenario

Foreign Direct Investment regulations

According to existing foreign direct investment regulations, investment in pharmaceutical company is categorized as under:

- Greenfield investments in the pharmaceuticals sector: 100% FDI permitted under automatic route
- Brownfield investments (i.e., investments in existing companies), in the pharmaceuticals sector: 100% FDI permitted under the Government route. i.e.,with the prior approval of FIPB

According to the Press Note issued by the GoI, we understand that the policy for foreign investment in India is under review and currently under deliberation. The extant policy is for the interim period and is expected to be amended, once the policy has been finalized by the GoI.

Other regulations

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

Prices for essential drugs are defined under the Drug Price Control Order (DPCO) and are regulated by the government through National Pharmaceutical Pricing Authority (NPPA). Further, the GoI is also proposing to bring certain medical devices within the ambit of DPCO. The Department of Pharmaceuticals was promulgated on 2 July 2008 under the Ministry of Chemicals and Fertilizers. The department was established with the objective to provide increased focus on development of the pharmaceutical sector in India and to regulate complex issues related to affordability and availability of medicines, R&D, the protection of intellectual property (IP) rights and international commitments related to the pharmaceutical sector, all of which require integrating work with other ministries.

Some of the sector-specific policy updates are outlined below:

Drugs

- The GoI has issued a Uniform Code of Pharmaceuticals Marketing Practices to check marketing practices of pharmaceutical companies for doctors prescribing their drugs.
- The GoI has revised the National List of Essential Medicines with a total of 348 medicines in the list and categorizing them according to their therapeutic areas.
- The GoI has issued a draft National Pharmaceuticals Pricing Policy, 2011 to replace the earlier Drug Policy of 1994 and to put in place a regulatory framework for pricing of drugs so as to ensure availability of essential medicines at reasonable prices while providing opportunity for innovation and competition to support the growth of the industry.
- The DGFT has implemented barcoding on export consignment of pharmaceuticals and drugs for tracing and tracking purpose. The trace and track technology has been made compulsory for tertiary level packaging with effect from 1 October 2011. Further, the second phase of barcoding will become mandatory from 1 July 2012 along with the third phase of barcoding on primary level packaging.
- The GoI has constituted the new Drugs Technical Advisory Board (DTAB) with Director General of Health Services being the ex-officio chairman of the statutory body constituted under the Drugs and Cosmetics Act. The DTAB is the highest decision-making body under the union health ministry on technical matters.

Clinical trial

- CDSCO has issued a draft guidance on requirement of submission of chemical and pharmaceutical information including stability study data for approval of clinical trials/BE studies.

Other key changes

The Government has constituted the National Apex Committee for Stem Cell Research and Therapy (NAC-SCRT) to review and monitor stem cell research in the country.

B.6 Technology

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

According to the IT Annual Report 2011–12, issued by the Department of Information Technology, it is estimated that the IT industry's contribution to India's GDP has increased to 7.5% in 2011–12, from about 7.1% in 2010–11.

The Indian software and services exports (including ITES and BPO exports) are estimated at

US$68.7b in 2011–12, as compared to US$59b in 2010–11, an increase of 16.4%.

Although the IT sector is export driven, its revenues from the domestic market have also been substantial — the domestic sector is estimated at US$19b in 2011–12, as against US$17.3b in 2010–11, an increase of around 9.8%.

India also continued its dominant position as the leading outsourcing market as compared to other emerging economies. It is estimated that India-based resources account for around 60% to 70% of the offshore delivery capacities available across the leading multinational IT players.

Regulatory scenario

As part of its trade policies to attract foreign investment in India and to promote exports, the GoI had introduced the SEZ scheme, and provided fiscal and tax incentives to even IT units operating out of such SEZs. This policy continues to be extended under the proposed new DTC, under which IT units operating in an SEZ can continue to avail such SEZ tax holiday, provided they commence operations in such an SEZ, on or before 31 March 2014.

With a view to strengthening the existing framework under the IT (Amendment) Act, 2008, the GoI has also introduced certain rules in relation to implementation of reasonable security practices and data privacy requirements by corporate organizations, for protecting sensitive personal information collected by them.

Recent developments and industry outlook

The Indian IT industry continues to have a positive outlook given its strong fundamentals, growth and maturity of the domestic market, and opening up of new fields such as cloud computing, mobile value-added services, and e-commerce. Nevertheless, the industry will need to cope with factors such as pricing pressures, increasing competition from low-cost jurisdictions and the economic downturn in traditional mature markets.

From an IT policy standpoint, the GoI has undertaken various initiatives, with the objective of providing a fillip to this sector. Some of the key initiatives are briefly outlined below:

- The GoI has recognized the importance of IT-ITES and Electronics hardware manufacturing in the country, both for strategic and economic reasons, and has released vision documents and draft policies for these key sectors, over the past year.
- The "Draft National Policy on IT" seeks to achieve the twin goals of bringing the full power of IT within the reach of the entire country and harnessing the capability and human resources available locally, to enable India to emerge as the Global Hub and Destination for IT-ITES by 2020.
- The "Draft National Policy on Electronics" envisions creating a globally competitive ESDM industry, including nano-electronics, to serve both the domestic and international markets.
- The GoI has also constituted an Empowered Committee to identify suitable technology and investors, for setting up Semiconductor Fabrication facilities in the country.
- Also, the continued introduction and implementation of various government-sponsored projects and e governance initiatives, such as the UID project, National Knowledge Network, etc., are expected to boost demand for IT in the country.

The phenomenal growth of the IT-ITES sector has seen it become one of the biggest employment generators and has also spawned the mushrooming of several ancillary industries. Direct employment in the IT industry is estimated at 2.77m in 2011–12, an increase of more than 9%. Further, indirect employment of more than 8.9m is estimated in 2011–12 in various associated sectors. Industry estimates reflect the growth to be more than 14m jobs (directly and indirectly) by 2015 and around 30m jobs by 2030.

With the current dynamic business environment, the Indian IT industry will need to focus on increasing operational efficiencies, reinvent and embrace new business models, which will offer customers a "transformational" business proposition, strengthen innovation and research capabilities through specific domain focus, and expand the skilled talent pool in the country.

B.7 Insurance

The Indian insurance industry has undergone a major transformation over the past decade and has evolved into a considerably competitive market.

A growing middle-income segment, rising income levels, increasing awareness about insurance, higher investments and infrastructure spending have laid a strong foundation to expand the insurance market in India. The total penetration of insurance (premium as a percentage of GDP) has increased manifold from 1.90% in FY00 to 5.10% in FY11.This progress has been further aided by better products, e.g., whole life, auto assistance, wellness and emergence of wide-ranging distribution channels, e.g., bancassurance, broking, corporate agency, online insurance etc.

Regulatory scenario

The Insurance Regulatory and Development Agency (IRDA) regulates the insurance and reinsurance business in India. The IRDA Act of 2000 addresses issues related to ownership, solvency, investment portfolio construction, commission structures, reporting formats and accounting standards.

The minimum paid up equity capital requirement has been set at INR1b (US$18.14m approximately). The insurance business is a capital intensive one and companies are likely to require regular capital infusion for funding expected losses and meeting solvency requirements. FDI (including FII and NRI investments) by a foreign partner is currently capped at 26% in an Indian insurance company joint venture.

The Insurance Laws (Amendment Bill), 2008 was introduced in the Parliament in December 2008. The same was referred to the Parliamentary Standing Committee on Finance, which submitted its report in December 2011.

Some of the key amendments proposed in the Bill are as follows:

- Increasing FDI limits in the insurance sector from 26% to 49%.
- Introducing "Health insurance business" as a separate category of insurance (the other categories being life and general insurance); minimum paid-up capital of INR500m (US$10m approximately) prescribed for standalone health insurance companies.
- Allowing foreign reinsurance companies to set up their branches in India.

Recent developments and industry outlook

Years 2010 and 2011 have witnessed path-breaking changes across several dimensions of the insurance landscape, be it products, distribution, fund raising or strategy. Various regulatory changes that have come up are as follows:

- **To make the Unit Linked Insurance Plans (ULIPs) a long-term protection contract** IRDA made several structural changes in ULIPs, such as increasing the lock-in period, doing away with excesses, etc. These measures changed the overall landscape for private insurers, which had around 80% of their product portfolio consisting of ULIPs. This reduced the attractiveness of ULIPs for insurers, distributors and customers to some extent.
- **To increase persistency and bring discipline among agents** IRDA has issued strict license renewal norms such as need for minimum business requirement.

- **To improve claims ratio and solvency margin,** IRDA has increased the third-party motor premium from April 2011.
- **To promote healthy competition and improve service standards,** health insurance portability has come into force from 1 October 2011. This allows the consumers to shift their insurance companies without forfeiting the benefits.
- **To safeguard policyholder's interest and improve customer satisfaction,** outsourcing of "non-core" activities was allowed by the IRDA.
- **To provide a framework for amalgamation and consolidation in the general insurance industry,** the IRDA notified the Scheme of Amalgamation and Transfer of General Insurance Business Regulations. The Scheme provides a two-stage approval of the IRDA such as, in-principal approval and a final approval (which is to be obtained after the Scheme has been examined by the other regulators including the High Court/Income Tax Appellate Tribunal).
- **To provide a framework for divestment to public by the promoters in case of life insurance companies who have completed 10 years,** the IRDA notified the Issuance of Capital by Life Insurance Companies Regulations governing raising capital and divestment of shares through public offer for sale by promoters of Indian life insurance companies who have completed 10 years of operations. These regulations require a life insurance company to seek IRDA's approval before approaching SEBI for public issue of shares.

The insurance sector in India has been through a bumpy ride for some time now. Although, in the last decade, the premium income has grown at a CAGR of 20%, the pace of growth is expected to slow down to around 15% for the next 10 years.

The sector is going through a transition phase. IRDA has been increasing its checks on the market practices adopted by insurance firms. This is basically to provide customers with products, which are more beneficial to them in the long run and improve the credibility of the industry in the market. Regulatory changes for pension plans and ULIPs are expected to push insurance companies to increase the term of the policies, reduce mis-selling of policies and promote traditional policies, which are not in vogue any more.

B.8 Media & Entertainment

With more than 623 television (TV) channels[1], 145m pay-TV households, more than 80,000 newspapers with a readership close to 182m[2] and 1,000 films produced annually, India's vibrant media and entertainment (M&E) industry provides attractive growth opportunities for global corporations. The industry is estimated to achieve a growth rate of 13% in 2012 to touch INR825b and is projected to reach INR1,500b by 2016, at a CAGR of close to 15%[3].

Regulatory scenario

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

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

In 2011, News Broadcasters Association[4] issued a new set of guidelines called NBA News Access Guidelines for general entertainment footage providing that live telecast of any general entertainment channel (GEC) cannot take place for more than eight minutes per day.

Further, the Indian Parliament sanctioned the Cable Television Networks (Regulation) Amendment Bill, 2011, which aims at digitization of the cable sector in the country by 31 December 2014 in a phased manner.

1 Pitch Madison Report 2012

2 Indian Readership Survey and Registrar of Newspaper

3 Industry outlook

4 The News Broadcasters Association is a private association of different current affairs and news television broadcasters in India.

FDI and FII investment by segments

Segment	Sectoral limits (%)
Broadcasting	
FM radio	26 (FDI+ NRI+ PIO+ portfolio investment)
Cable network	49 (FDI+ NRI+ PIO+ portfolio investment)
DTH	49 (FDI+ NRI+ PIO+ portfolio investment), subject to maximum FDI component of 20
Headend-in-the-sky	74 (total direct and indirect foreign investment including portfolio and FDI)
Setting up an up-linking facility hub	49 (FDI+FII)
Up-linking news and current affairs channel	26 (FDI+FII)
Up-linking non-news and current affairs channel	100
Print media	
Publishing of newspaper and periodicals dealing with news and current affairs	26 (FDI+NRI+PIO+FII)
Publication of Indian editions of foreign magazines dealing with news and current affairs	26 (FDI+NRI+PIO+FII)
Publication of scientific, technical or specialty magazines, journals and periodicals	100
Publication of facsimile editions of foreign newspapers	100
Others	
Advertising	100
Films, music and live entertainment	100

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

Recent developments and industry outlook

Segmentwise recent developments:

- TV — The television distribution industry is gearing up to embrace the digitization process and broadcasters have expanded their regional footprint to establish pan-India networks. The new date set for the first phase of digitization (which includes the four metros) is 1 November 2012. This, alongwith the expansion of digital distribution technologies, has led to the consolidation of the distribution business to capture pan-India markets and will revolutionize the way to deliver content to the ultimate customers.
- Print — Newspapers account for 42% of all advertising spend in India, the highest among any medium. The top ten English newspapers added 0.123m readers in the latest round of the readership survey conducted by the Media Research Users Council (MRUC) in collaboration with Hansa Research. The print players are in the process of getting their digital strategy in place to be ready for the opportunity being presented by new content and digital delivery formats.
- Film — Indian film companies are using digital media to generate new ancillary revenues and to promote films through direct-to-consumer engagement. Indian audiences are actively consuming digital film content; film-related songs and mobile themes account for 50% of Indian mobile value-added service revenues. Digital distribution of films has reduced costs, increased scale and reduced piracy. Low-budget, content-driven movies based on high-quality scripts are gaining acceptability among mainstream audiences. Given the fast-paced momentum in VFX space, the country's first Animation and Visual Effect Centre of Excellence will be set up in Mohali, Punjab. On the financing side, producers are able to leverage organized sources of financing such as banks loans, film funds and crowd funding.

  To encourage industry-level cooperation, share creative talent and support the vibrant film industry, India has entered into co-production agreements with Poland, Italy, Northern Ireland, New Zealand and other countries.

- **Radio** — Since the opening of the sector to private players in March 2000, the GoI is taking steps to provide a thrust to the sector. In this backdrop, the GoI is expected to commence e-auctions for Phase III of FM radio from December 2012. The auctions will be spread over a period of three years to increase the number of private FM radio channels from 245 currently to around 839, covering another 227 cities with a population of more than 0.1m.
- **Sports** – After successfully hosting the Indian Premier League (T20), 2010 Commonwealth Games and Formula One race, the notion of India being a single-sport country has changed. This momentum, combined with a young population and a rising propensity to spend on entertainment, has made way for FIA GT1 championship, and World Superbike series with others being in the pipeline. Large private groups have entered long-term agreements to develop sports other than cricket. The sports industry is also spurring the growth of ancillary businesses such as online ticketing and sports and talent management.
- **Others** — Earlier, copyright of literary, dramatic or musical work were assigned to the producers and the artistes did not earn royalty income. With the Copyright (Amendment) Act 2012 coming into force, artistes are declared as owners of the copyright and it will now become mandatory for broadcasters — both radio and television — to pay royalty to the owners of the copyright each time their work is broadcast.

Industry outlook

- The M&E industry now finds itself a new inflection point — digitization and digital media. With the launch of 3G and expected 4G services and the mobile phone user base of more than 750m subscribers, the scale and impact of potential digital content consumption is enormous.
- India has diverse content market, since majority of India's urban consumption comes from non-metro cities (Tier-2 and Tier-3 towns). These regional markets are significant "markets within a market", and provide global M&E companies with a variety of opportunities to deliver localized content.

- Media sectors regarded as "sunset" industries in mature markets are flourishing in India, presenting global media companies with exciting opportunities to counter declining revenues. For example, the newspaper industry, which is facing declining readership in many international markets because of digital media, continues to thrive in India, driven by increasing literacy rates, consumer spending and the growth of regional markets and specialty newspapers. Also, with favorable demographics and an increase in disposable incomes, the propensity to spend on leisure and entertainment is likely to continue growing. While there are many opportunities to tap, there are also unique challenges in the areas of content localization, distribution and pricing, regulations and piracy.

In view of the above, there is likelihood of M&E players scaling up through consolidation/diversification across the value chain.

B.9 Mining & metals

The mineral wealth of a country is pivotal to its industrial development, since minerals provide basic raw material for most industries. As an ancillary activity of the manufacturing industry, mining contributes to wealth creation through foreign exchange and employment generation. India develops 87 minerals, which include 4 fuels, 10 metallic, 47 non-metallic, 3 atomic and 23 minor minerals (including building and other material). The country holds abundant reserves of key minerals such as iron ore, bauxite, dolomite, gypsum, limestone and mica. In fact, India is one of the leading producers of key minerals such as iron ore and bauxite.

The mining sector is an important segment of the Indian economy and along with the quarrying sector contributes more than 2% to the country's economy.

Regulatory scenario

The Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) lays down the overall framework for the regulation of mines and the development of minerals in India (except petroleum and natural gas). According to the Mineral Concession Rules 1960 (MCR 1960), which was framed under the MMDR Act, the Central Government gives concessions to all minerals other than atomic and minor minerals. State governments, on the other hand, frame rules for the mining of minor minerals.

The Ministry of Mines is the main regulatory body for the administration of the MMDR Act for all mines and minerals (excluding coal, natural gas and petroleum). Key bodies under the Ministry of Mines include the Geological Survey of India (GSI), the Indian Bureau of Mines and the Directorate General of Mines Safety. At the state level, respective regional arms of the Directorate of Mining & Geology regulate industry activity. Meanwhile, the Ministry of Coal is responsible for the development of coal reserves in India.

FDI up to 100% is allowed under the automatic route for mining and exploration of metal and non-metal ores, including diamond, gold, silver and precious stones. However, no FDI/private investment is permitted in coal and lignite mining, except for captive consumption by power, cement, and iron and steel companies. Further, FDI up to 100% is allowed under the government approval route for mining and mineral separation of titanium bearing minerals and ores, subject to prescribed conditions.

Recent developments and industry outlook

In an effort to improve prospecting and mining activity in India, the GoI issued the National Mineral Policy in 2008. Succeeding the earlier National Mineral Policy 1993, this policy envisages an improved regulatory environment and more transparency in the allocation of mining concessions.

As a way forward to the policy, the GoI is currently undertaking a comprehensive review of key acts and regulations such as the MMDR Act. A draft bill, The Mines and Minerals (Development and Regulation) Bill 2011 (MMDR Bill), approved by the Cabinet but pending before Parliament, is proposed to substitute the old MMDR Act.

The amended legislation is expected to improve the country's regulatory environment; making it more transparent and simple; inculcate clarity on grants of mineral concessions and help build a sustainable development framework for the Indian mining sector.

In terms of industry outlook, India's mineral basket is all set for unprecedented growth due to the rich mineral reserves. In such a scenario, the GoI, the industry and state governments must collaborate to showcase the country's mineral potential globally.

B.10 Oil and gas

India is the world's fourth-largest consumer of primary energy, the consumption of which has grown at a CAGR of 6.5% between 2001 and 2011 as compared to a global average of 2.7%[1]. The country's primary energy requirement is expected to more than double over the next two decades. Oil and gas currently accounts for 38.9% of its primary commercial energy consumption, and this share is projected to increase marginally over the next two decades[2].

During the last decade, India's oil and gas consumption has been rising in line with the growth in GDP. However, stagnant domestic oil production has been unable to keep pace with the rising demand, due to which the country's dependence on imported oil is also going up. The consumption of oil has risen at a CAGR of 4.3% during 2001–2011, while the production has risen at a CAGR of 1.7% in the same period[3]. As a result, the country imported nearly

1 "Primary Energy: Consumption (from 1965)," BP Statistical Review of World Energy June 2012, accessed 1 August 2012

2 Hydrocarbons Vision 2025," Ministry of Petroleum and Natural Gas, "Primary Energy: Consumption by fuel type," BP Statistical Review of World Energy June 2012, accessed 1 August 2012

3 "Oil: Consumption," BP Statistical Review of World Energy June 2012, accessed 1 August 2012; "Oil: Production," BP Statistical Review of World Energy June 2012, accessed 1 August 2012

three-fourth of its crude oil requirements in 2010–11[4]. India's natural gas market is characterized by a supply deficit, primarily due to low domestic production and inadequate transmission and distribution infrastructure. The consumption of gas has risen at a CAGR of 8.7% during 2001–2011, while the production has risen at a CAGR of 5.7% in the same period. The demand for natural gas far exceeds the domestic supply in India, resulting in a deficit and increased reliance on imported gas, in the form of liquefied natural gas (LNG). The consumption of gas has risen at a CAGR of 8.7% during 2001–2011, while the production has risen at a CAGR of 5.7% in the same period[5]. In fiscal year 2012, LNG accounted for around 30% of the total gas supplies in the country[6].

At the end of fiscal year 2012, there were 21 crude oil refineries operating in India, with an installed refining capacity of 193.4 MMTPA 7[7]. The country has a surplus refining capacity, and is a net exporter of petroleum products, with net exports of 45.2MT during fiscal year 2012.

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

4 Petroleum Planning and Analysis Cell

5 "Natural Gas: Consumption," BP Statistical Review of World Energy June 2012, accessed 1 August 2012; "Natural Gas: Production," BP Statistical Review of World Energy June 2012, accessed 1 August 2012

6 "Petroleum Statistics: monthly production," Ministry of Petroleum and Natural Gas; "Trend of Import of LNG in India (2003-04 to 2011-12)," Infraline Energy database, accessed 31 July 2012, http://www.infraline.com/Details/Import-of-LNG-in-India%C2%A0-2003-04-to-2011-12-176940.htm

7 "Existing Refineries in India," Infraline Energy database, accessed 31 July 2012, http://www.infraline.com/ongsector/#existing-refineries-150455.htm; "Import/Export of crude oil," Petroleum Planning and Analysis Cell, accessed 31 July 2012Petroleum Planning and Analysis Cell

Regulatory scenario

The industry is under the administrative ambit of the Ministry of Petroleum and Natural Gas (MoPNG). An FDI of up to 100% under the automatic route (subject to sectoral policy regulation) is permitted in all activities except in the case of refineries owned by national oil companies.

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

Recent developments and industry outlook

Energy security and prevailing geo-political scenario have been the key drivers for oil and gas trade agreements. India has recently entered agreements for natural gas import through transnational pipelines and LNG import. India signed a gas import agreement for Turkmenistan-Afghanistan-Pakistan-India (TAPI) pipeline to import 38 mmscmd gas by 2018. GAIL, India's gas transmission NOC, has recently signed a long-term gas sourcing agreement with US-based Cheniere Energy to import 3.5 MMT LNG per year.

In the upstream segment, the New Exploration Licensing Policy (NELP) has given a boost to private investment and an added impetus to exploration and production (E&P) activity — production sharing contracts (PSC) for 247 blocks have been signed during the first nine rounds of NELP[8]. In 2011, BP and RIL announced a US$7.2b partnership deal, which is one of the largest FDIs in the country[9]. Vedanta's acquisition of a majority stake in Cairn India for US$8.67b was completed in December 2011[10].

8 "Bidding Rounds," Directorate General of Hydrocarbons website, www.dghindia.org, accessed 30 July 2012

9 BP and Reliance commence strategic alliance for India," RIL press release, http://www.ril.com/downloads/pdf/PR30082011.pdf, 30 August 2011

10 "Completion of Acquisition of a Controlling Stake in Cairn India Ltd." , Vedanta media release, http://www.vedantaresources.com/uploads/vedantaresourcesplc_cairndealcompletion_presentation_final.pdf, 31 August 2012

11 "Evaluation of Shale Resources," Press Information Bureau website, http://pib.nic.in/newsite/AdvSearch.aspx, accessed 29 March 2012

The plan to introduce Open Acreage licensing policy replacing NELP and bidding for shale gas exploration toward the end of 2013 is expected to result in significant investments and new opportunities for upstream companies and service providers[11].

India is expected to continue its strategy to have surplus refining capacity to cater to its domestic market as well as continue to emerge as export hub for petroleum products to developed markets in North America and Western Europe.

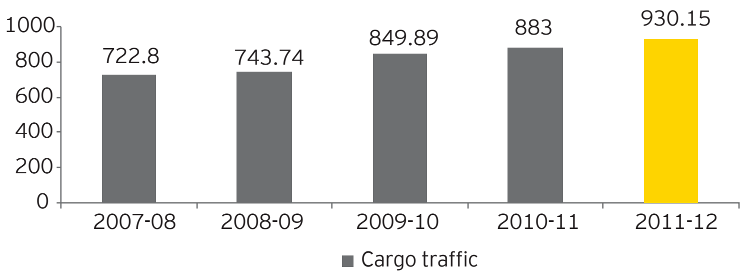
B.11 Ports

Overview

India has 13 major ports and approximately 200 non-major ports, accounting for 95% of the country's total trade in terms of volume and approximately 70% in terms of value. In FY12, major ports accounted for approximately 60.0% of the total cargo traffic, while the remaining traffic was handled by the non-major ports. Major ports are currently operating at ~80% utilization.

Cargo traffic at Indian ports has increased at a CAGR of 6.5% from 723m tonnes in FY08 to 930.15m tonnes in FY12.

Total cargo traffic (in million tonnes)



Source: India Infrastructure Research June 2012

Regulatory scenario

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

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

Recent developments and industry outlook

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

In January 2011, the Ministry of Shipping introduced its perspective plan detailing the development for the port sector for the next 10 years. A total of 352 projects have been identified for implementation under the Maritime Agenda 2010–2020. In the case of major ports, the GoI plans to invest US$20b for an incremental capacity of 767m tonnes. Out of this, the private sector is expected to contribute US$14b (almost ~70%) and the rest will be funded by the Centre. In the case of non-major ports, the GoI plans to invest US$31b for an incremental capacity of 1,294m tonnes. Out of this, the private sector is expected to contribute US$29b (96% of the fund requirements), while the rest will be provided by the state governments.

Another focus area for the GoI has been the development of inland container depots and container freight stations to facilitate cargo distribution at Indian ports. Container traffic at major ports has increased at a CAGR of 5.0% between FY08 and FY12. It is expected to increase from the current 7.8m twenty-feet equivalent units (TEUs) to 20m TEUs by 2020.

According to the estimates of the Planning Commission, the investment in the port sector during the Twelfth Five Year Plan is expected to be approximately US$50b, of which a substantial portion is expected to be contributed by the private sector[1].

1 "Approach to the Twelfth Five Year Plan," Planning Commission website, www.planningcommission.gov.in, accessed 30 July 2012

B.12 Power (including Cleantech) and utilities

India's power generation capacity, as on 30 June 2012 (according to the Ministry of Power, GoI) is estimated at around 205.340[1] Giga Watt (GW) (with captive power generating capacity of 31.51 GW), wherein the private sector contribution is just exceeds 27.75% of the installed capacity. Coal, gas and diesel fuel-based thermal power plants form a major portion (66.4%) of the installed capacity, accounting for nearly 136.44 GW of the total installed capacity in the country. The share of renewable energy in installed capacity increased from 3% in 2002 to around 19.1% in June 2012.

The total quantum of power generated in the country has increased from 788.4 b units (BU) in FY 2010-11 to 876.888 BU in FY11–12[2], growing at the rate of 11.22% on a year-on-year basis. India's inter-regional (national grid) power transmission capacity stands at 23.80 GW (November 2011)[3].

The Indian power generation industry reached several milestones in the last fiscal year. New benchmarks were achieved with the introduction of supercritical technology. However, the sector is still grappling with several issues, largely related to fuel availability, which have the potential to slow down progress. At the end of FY11–12, the peak electricity demand met was 114.23 GW, resulting in a peak deficit of 12.1%, while the electricity energy availability was 876.888 BU, which has resulted in an energy deficit of 8.3%.

1 Monthly Review of Power Sector Reports (Executive Summary), June 2012," CEA website, http://www.cea.nic.in/reports/monthly/executive_rep/jun12/1-2.pdf

2 "Monthly Review of Power Sector Reports (Executive Summary), March 2012," CEA website, http://www.cea.nic.in/reports/monthly/executive_rep/march12/1-2.pdf

3 Ministry of Power annual report 2011-12, CEA website

Regulatory scenario

The regulatory landscape of the Indian power sector has evolved significantly. There is a sound and progressive legislative framework in the form of the Electricity Act, 2003, which was amended in 2007. The follow-on policies among others being, the National Electricity Policy 2005, which provides guidelines for accelerated development of the electricity sector and the National Tariff Policy 2006, which assures electricity to consumers at reasonable and competitive prices. FDI up to 100% is permissible in the power sector segments (excluding atomic energy) under the automatic route.

The power industry operates under the regulatory control of Ministry of Power. Governing bodies for the power sector consists of Central Electricity Regulatory Commission (CERC) at the national level, 28 State Electricity Regulatory Commissions (SERCs) at state level and joint electricity regulatory commission (JERC) for Goa and all union territories and for Manipur and Mizoram. The governing bodies have been established to determine tariff for generation and supply of electricity, regulate electricity purchase and procurement process, facilitate inter-state transmissions etc.

In order to accelerate capacity addition and meet persistent supply shortages, the GoI has launched initiatives for development of coal-based, super critical, ultra mega power projects (UMPPs), wherein about 15,880 MW of private capacity has been tied up in four projects so far. The GOI is in the process of identifying new sites in Odisha and Gujarat to set up UMPPs. Now the new projects will be allotted only after the GoI finalizes the new bidding norms.

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

The GoI has launched the Jawaharlal Nehru National Solar Mission (JNNSM) for development of solar energy technologies and creation of the policy conditions for the diffusion of solar power generation across the country as quickly as possible. The mission recommends the implementation in 3 stages leading up to an installed capacity of 20,000 MW by the end of year 2022. Further, the JNNSM also aims to boost India's domestic manufacturing capability in respect of the components and equipment required by solar power plants. It targets a manufacturing capacity of 4 –5 GW equivalents by 2020, including capacities for poly-silicon, an area in which India is currently reliant on imports.

Recent developments and industry outlook

After December 2010, eight more supercritical technology units by Adani Power, NTPC, Sterlite Energy and TATA Power have been commissioned during the Eleventh Plan period. NTPC, Bharat Heavy Electrical Limited (BHEL) and the Indira Gandhi Centre for Atomic Research (IGCAR) have collaborated to jointly develop a coal-fired power project based on advanced ultra, supercritical thermal power technology. NTPC will be the implementing agency for the project.

According to the Ministry of Power, all the bidding procedures in the Twelfth Five Year Plan period is likely to incorporate the clause, enabling distribution companies to transfer any rise in fuel cost to consumers. This may be possible in policy terms but practical feasibility of increasing electricity cost is likely to pose challenges.

The shortfall in coal availability is being mitigated through the blending of imported coal to the extent technically feasible. The CEA issued an advisory to all generating companies and equipment manufacturers stating that the design of all future indigenous coal-based thermal plants could allow for blending of domestic coal with imported coal in the ratio of 70:30.

The GOI has become serious about attracting private sector investments. Eight interstate transmission projects have been awarded in the past few years through competitive bidding. Five more projects have been identified by the GoI to be bid out through the competitive route.

In the post-Fukushima scenario, India revisited their nuclear policies to continue their nuclear commitment with more stringent safety measures. The Nuclear Safety and Regulatory Authority (NSRA) Bill has been formulated with a view to strengthen the regulatory framework to ensure the highest level of safety through an independent regulatory body.

A serious issue for both public and private transmission project developers is procedural delays in land acquisition, environmental and related statutory clearances, and equipment deployment, particularly in hostile terrains, which needs to be addressed on an urgent basis. There is an urgent need to create liquidity in the market to sustain private interest.

Even though power projects continue to attract financing from various sources, the rate of inflows has slowed down. As India progresses to higher voltages and better technology, new issues such as asset management, hotline maintenance, emergency restoration of towers, augmentation of test facilities, and road transportation of heavy equipment, among other things, will need to be addressed.

B.13 Real estate

India's real GDP has increased at a CAGR of almost 8% during the last five years, driven by strong growth in the services sector. Over the medium to long term, the fundamentals fuelling the growth are expected to be intact and the economy is expected to consistently outpace the global economy.

The real estate sector is a key contributor to the GDP of the country and most of the factors underpinning economic growth have a direct impact on the growth of the sector. With the GDP for FY13 expected to grow approximately at the rate of 7.6%, the real estate sector is expected to show a measured growth in the next year.

An overview of the real estate sector in India shows that in recent times Indian developers have been increasingly turning to private equity funds and non banking financial companies for their fund requirements for land acquisitions. India is attracting the highest number of unlisted, closed-end funds that focus on a single country, making it one of the preferred choices among emerging markets in the world. Since 2006, approximately US$16b has been invested by PE funds in the Indian markets. FDI investment in the real estate sector accounted for approximately 9% of the total FDI investments in India during FY12.

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

The commercial real estate segment (primarily office space) is growing in tandem with the country's booming economy. Commercial and retail spaces are potentially attractive investment options, especially in larger cities with a return of 10% to 12 % and growing demand for office space in metros. Seven cities (Bengaluru, Chennai, Hyderabad, Kolkata, Mumbai, the NCR and Pune) cater to 75% of the total demand for commercial real estate. While consumer spending has increased, rentals for retail real estate continue to currently remain under pressure due to excess supply. The Government is considering the proposal for 100% FDI in multi brand retail, which may be the next boom in retailing. Triggered by a rise in income levels, the middle class of the country is poised to transform the retail landscape in India.

Constant transformation has made the Indian hospitality segment more functional and practical and has gained a level of acceptance world over. The GoI has stepped up reforms to accelerate the industry growth with liberalization in the regulatory framework, investment-friendly schemes, support for creating a world class infrastructure, initiating better air and land connectivity and incentivizing regional set-up in tier-III and IV cities. Currently 29 mega tourism projects are being initiated across 22 states. The GoI is focusing on the PPP model and is looking beyond the traditional tourism avenues, to new initiatives — medical tourism, sports and adventure tourism, religious circuits, wildlife safaris, rural tourism, eco tourism, cruise tourism and wellness tourism.

According to World Travel & Tourism Council, travel and tourism in India is expected to grow in India at 12.7% till 2019. The Indian hotel industry is witnessing a spurt of foreign investment and international brands entering the foray. Most major international hotel brands such as Starwood, Hilton, Marriott, Hyatt and Accor already have a growing presence in India and have an enhanced pipeline. The emergence of branded budget and economy segment hotels present significant opportunities. An emerging market exists in the hospitality sector in India.

Regulatory scenario

Foreign direct investment (FDI) regulations

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

- Townships, housing, built-up infrastructure and construction - development projects (including housing, commercial premises, educational institutions, recreational facilities, etc.) under the automatic route, subject to prescribed conditions**
- Establishment and operation of hotels
- Establishment and operation of hospitals
- Set up of SEZs
- Set up of industrial parks

**The prescribed conditions are as follows:

- Subject to area restrictions (10 hectares for service housing plots; for others 50,000 sq mts built up area)
- Minimum capitalization – US$10m (US$5m in case of JV with an Indian partner)
- Lock in – each tranche of foreign investment locked in for three years from infusion
- 50% of the project to be completed within five years of all statutory clearances — this condition is applicable to each project
- Sale of undeveloped land not permitted

The abovementioned conditions will not be applicable to investments made into SEZ, hotels, hospitals, industrial parks and investments by NRIs.

External Commercial Borrowings (ECBs) regulations

ECBs, per se, are not permitted in the real estate sector in India. However, ECBs can be accessed for low-cost housing, industrial parks and by developers of Special Economic Zones (SEZs), to provide infrastructural facilities within the SEZ.

Recent developments and industry outlook

Some key measures initiated by the GoI with relation to the real estate industry from a tax and regulatory perspective include:

- Withholding tax on ECBs (wherever allowed) reduced from 20% to 5% with applicable surcharge and cess for three years (subject to conditions).
- Credit Guarantee Trust Fund is proposed to ensure better flow of institutional credit for housing loans.
- Scheme of interest subvention proposed to be extended for this year, under the 1% subvention allowed on housing loan up to INR1.5m, provided the cost of the residential propertydoes not exceed INR2.5m.
- FDI in construction development activities for the education sector and for the old–age homes has been exempted from the conditions applicable to the construction development sector in general, i.e., minimum area and built-up area requirement, minimum capitalization requirement and lock-in period.
- In order to reduce housing deficit in the country, the GoI has proposed the creation of a Mortgage Risk Guarantee Fund to enable provision of credit to economically weaker sections (EWS) and low-income group (LIG) households.

The Indian economy witnessed a slow down in FY12 due to slow industrial growth, rising inflation and adverse global economic environment. Tightening of monetary policy by the RBI further aggravated the situation. Going forward, the GDP for FY13 is expected to be slow initially due to a combination of global and domestic macroeconomic factors.

The real estate sector is expected to continue to demonstrate robust double digit growth. The sector is expected to grow rapidly once savings and capital formation begin to rise. For sustained growth, a favorable business environment, including improved infrastructure and reduced administrative requirements will be critical.

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

B.14 Retail and consumer products

With an estimated market size of US$440b in 2011, India's retail sector is at the peak of its appeal for international and Indian players. Being the second-largest employer after agriculture, this sector is expected to grow to US$730b by 2015, ensuring that the retail sector continues to be one of the mainstays of the Indian economy. Modern retail accounted for approximately 6.5% of the total retail market in India in 2011. This share is expected to increase to approximately 9% by 2015 with increase in penetration and entry of new players into the segment.

Regulatory scenario

Up to 100% FDI is allowed under the automatic route in cash-and-carry wholesale trading and export trading subject to fulfillment of the prescribed conditions. 100% FDI is also permitted under the automatic route for B2B e-commerce transactions,subject to conditions

Up to 100% FDI is allowed in single-brand product retail trading with prior government/FIPB approval and subject to fulfillment of prescribed conditions. Further, if FDI in single-brand product retail trading exceeds 51% then, interalia, additional sourcing conditions need to be complied with. The GoI is likely to adopt a calibrated approach, to further open up the industry to foreign investment in areas such as multi-brand retail and rationalize the sourcing conditions for single-brand product retail trading.

Recent developments and industry outlook

Many large Indian conglomerates and business houses are showing strong interest to make a significant headway in the retail sector. It is estimated that the organized retail segment will grow at 24% annually to reach a market size of approximately US$66b by 2015. The demand for international brands is also showing a healthy uptrend. Furthermore, the growing presence of domestic companies across the different retail verticals is giving the Indian organized retail market a strong boost.

Changing lifestyles, strong income growth and favorable demographic patterns have resulted in healthy consumer demand.

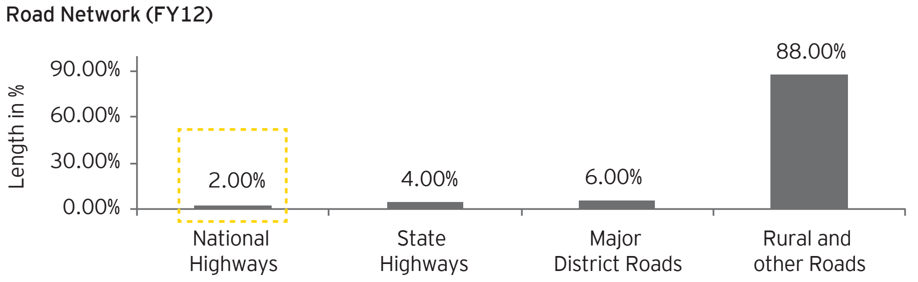
Further, the small town and rural revolution in India is also proliferating rapidly, it is driven by rising purchasing power, changing consumption patterns, easy access to information and communication technology, improved infrastructure and government initiatives to boost the rural economy.

B.15 Roads and highways

Overview

India has one of the largest road networks in the world, spread across approximately 4.1m kms. Roads are the preferred mode of transportation in the country and account for 87% of passenger traffic and 63% of freight traffic. National highways, which account for only around 2% of the country's total road length, bear around 40% of the total road traffic. In the last five years, the number of vehicles in the country has grown at 10% annually.[1]

1 Ministry of Road Transport and Highways 2011-12 annual report



Source: Ministry of Road Transport and Highways 2011-12 annual report

Regulatory scenario

In India, National Highways are administered by the Ministry of Shipping, Road Transport and Highways (MOSRTH) and the National Highway Authority of India (NHAI). State highways and major district roads are governed by state public works departments and road development corporations. Rural roads are monitored and maintained by the Ministry of Rural Development (MoRD).

As roads form an integral part of the economic and social development of a country, the GoI has made concerted efforts to improve road connectivity in India. It has announced policy measures to attract foreign and domestic private investment for road development. Some of these policy measures include permission of up to 100% FDI and provision of capital grants of up to 40% of the project cost to enhance the viability of projects.

Additionally, the government has also announced policy measures to create substantial opportunities for private investors and increase the scope of PPP on road projects. Over the years, investment in the sector has increased considerably and is expected to increase from INR2,786b during the Eleventh Five Year Plan (2007-12) to INR4,900b in the Twelfth Five Year Plan (2012-17).[2]

2 Sector focus- Roads and bridges, India Infrastructure, August 2011

Recent developments and industry outlook

The GoI has launched the National Highway Development Programme (NHDP) to improve and maintain the road network in the country. The primary objective of the NHDP is to develop and upgrade more than 50,000 kms of national highways, in seven phases, with an investment of INR2, 356.9b till 2015.

Status of NHDP and NHAI projects as on 30 June 2012

Projects	GQ*	NSEW** Phase I and II	NHDP Phase III	NHDP Phase V	NHDP Phase VI
Total length (km)	5,846	7,300	12,109	6,500	1,000
Already four/six-laned (km)	5,842	6,031	4,071	1,052	-
Under implementation (km)	4	691	6,198	3,028	-
Contracts under implementation (no.)	8	63	56	16	-
Balance length to be awarded (km)	-	420	1,840	2,420	1,000

The funds for the program are being arranged through budgetary allocation, a central road fund as well as external assistance and market borrowing. Till December 2011, a total of INR 264.1b had already been spent on NHDP projects.[3]

The GoI has also launched the Pradhan Mantri Gram Sadak Yojana (PMGSY) to provide connectivity to isolated rural habitations in the country. Under the program, around 4, 19,000 km roads have been cleared as of November 2010. This will benefit 1, 07,974 habitations, and will have an estimated cost of INR1,182.98b.[4]

3 Ministry of Road Transport and Highways 2010–11 annual report

4 "Economic survey 2010-11," Union Budget and Economic Survey website, indiabudget.nic.in/

	NHDP Phase VII	SARDP-NE	NHDP Phase IV	NHDP Total	Port connectivity	Others	Total by the NHAI
	700	388	14,799	48,642	380	1,390	50,412
	16	40	2	17,054	359	963	18,376
	25	72	3,316	13,334	21	408	13,763
	2	2	1	148	3	5	156
	659	276	11,481	18,096	0	20	18,116

In FY12, the Ministry of Road Transport and Highways lowered its initial target to develop 20 km of national highways per day to around 10–12 km per day, due to lack of policy support and land acquisition delays. In FY12, the Ministry constructed, on an average, 10.39 km of roads per day.[5]

According to the estimates of the Planning Commission, total investment in the road sector during the Twelfth Five Year Plan (2012–2017) will amount to approximately INR4,900b, of which 40% is expected to be contributed by the private sector.[6]

5 "2011-12 Annual Report," Ministry of Road Transport & Highways website, http://morth.nic.in/showfile.asp?lid=820, accessed on 29 July 2012.

6 "Sector Focus - Roads and Bridges," India Infrastructure magazine, August 2011.

B.16 Telecommunications

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

India has been one of the fastest-growing telecom markets in the world, particularly due to unprecedented growth in mobile telephony, and is currently the world's second-largest telecom market in terms of subscriber base. This high growth rate has been achieved primarily due to sharp decline in tariffs fueled by intense competition in the market. This is evidenced by the fact that the number of telephone connections[1] at the end of May 2012 stood at 960.90m as compared to 41m at the end of December 2001. This growth has been cemented by the cellular segment (mobile phones) that alone accounted for 929.37m connections[1]. The composition of the telecom sector too has witnessed a structural change, with the private sector accounting for 88% of the total connections.

The launch of 4G has placed India among the top telecom markets in the world and can be rightly said to be the beginning of a golden era in India's telecom industry. India has recorded significant growth in consumption of data and content over mobile devices and proliferation of mobile with the introduction of 3G and 4G mobile services.

1 "Press Release No. 143/2012," Telecom Regulatory Authority of India press release, http://www.trai.gov.in/WriteReadData/PressRealease/Document/PR-TSD-May12.pdf, 4 July 2012

Regulatory scenario

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

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

Foreign Direct Investment (FDI) in companies engaged in various telecommunication services is permitted as follows:

- Telecom operators operating in basic, cellular, unified access, national/international long distance, V-Sat, public mobile radio trunked services (PMRTS), global mobile personal communications services (GMPCS), other value-added services, ISP, radio paging and end-to-end bandwidth services — FDI up to 74% (49% under the automatic route) is permissible under the approval route.
- Infrastructure providers — FDI up to 100% (49% under the automatic route) is permissible under the approval route.
- Telecom equipment manufacturers — FDI up to 100% is allowed under the automatic route.

Regulatory outlook

National Telecom Policy – 2012 (NTP – 2012)

The GoI approved NTP – 2012 in May 2012, which lays out the broad framework for India's graduation to the next "level" of development in the telecommunications space. With key thrust of NTP – 2012 being multiplier and transformational impact of telecom services on the overall economy and other objectives such as increasing rural tele-density, providing affordable and reliable broadband-on-demand, NTP – 2012 strives to achieve "convergence" or "harmony" among technologies, services, regulatory framework, etc., that is the hallmark of any developed telecom market.

NTP – 2012 states that convergence between telecom, broadcast and IT services should be achieved through harmonized legal, regulatory and licensing framework and it recognizes the move to Unified Licensing regime in India (discussed in subsequent paragraphs) as the first step toward this convergence, which is likely to facilitate delinking of licensing of networks from delivery of services to end users. This will enable the operators to utilize their networks and spectrum efficiently by sharing active and passive infrastructure and also facilitate resale at the service level, for instance through introduction of virtual operators.

Recognizing the role spectrum plays in telecom industry, NTP – 2012 resolves to incorporate a framework to increase the availability of spectrum for telecom services (including triple play services, i.e., voice, video and data) and allowing spectrum pooling, sharing and even trading. NTP – 2012 also recognizes the potential role that cloud computing could play to benefit consumers and even Central/State Governance and the need for new policy initiatives needed to ensure rapid expansion of such new services at globally competitive prices.

Unified licensing regime

In April 2012 TRAI released its recommendations on Guidelines for Unified License (UL) regime in India and migration of existing licenses to the UL regime. Guidelines provide for three levels of Unified Licenses — national, service area and district level. Delinked from allocation of spectrum, which is proposed to be allotted separately, Unified Licensees are expected to be service and technology neutral. Strict entry norms related to net worth have been prescribed while FDI restrictions, as applicable to existing players, are likely to apply. The Guidelines also provide for an annual Licence Fee as a percentage of Annual Gross Revenue (AGR), as defined in the existing license agreements, along with an entry fee and a fee/royalty payable toward Wireless Planning and Coordination Wing, as may be prescribed. The Guidelines in their present form will significantly impact the passive infrastructure players in India, who will also get covered by licensing requirements, FDI restriction, license fee implications, etc.

As a step toward the unified licensing regime and convergence of services, technology and licenses, license fee rates have also been amended recently with a single rate of 8% proposed for all licenses from 1 April 2013.

Cloud computing

Cloud computing is expected to significantly speed up design and roll out of services, enable social networking and participative governance and e-Commerce on a scale, which was not possible with traditional technology solutions. Regulators in India also realize the potential role of advanced service technologies such as cloud computing and several policy initiatives to ensure rapid expansion of such new services and technologies at globally competitive prices are expected.

Value added services

In a move directed toward supporting and regularizing the fast growing yet unsupported industry of value-added services, TRAI in its recommendation paper released in May 2012, suggested that Application Service Providers (ASP) should be covered under a licensing regime (license through authorization), for which conditions seem to be very liberal. To bring more clarity on provision of value-added services, TRAI has recommended that all existing and proposed UAS licenses should be amended to include that all licensees may provide application services and any additional facilities that technology permits, subject to intimation to regulatory authorities.

Launch of 4G technology in India

4G technology allows phone users to surf the internet, video conference, high-definition mobile television and download music, video and other content at a rate several times faster than 3G technology.

4G not only caters to mobile networks but to all business segments of an operator that includes internet, fixed line, voice and enterprise services. India offers significant market potential for 4G considering increasing use of mobile and internet service in urban areas. Some incumbent players have already launched 4G services in certain urban telecom circles in April 2012.

Revised Security norms for Telecom Equipment used by telecom licensees

On 31 May 2011, DoT issued amendments in the telecom license to lay stringent rules regarding procurement of telecom equipment and making the service providers responsible for any security breach in their networks. In addition, on 7 September 2011, DoT issued a brief of monitorable items to be complied by the licensees. Key compliances to be undertaken by telecome licencees are:

- Telecom operators are required to get the network security audited from a network audit and certification agency every financial year[2], with a requirement to submit the first status report by 30 November 2011 and then by 30 May 2012. Then onward the status report of each financial year is required to be submitted on 1 April of next financial year.
- Telecom operators can only import equipment certified according to Indian or international standards by any international agency till 31 March 2013. Thereafter, the equipment is required to be certified by authorized laboratories in India. It is required that details with respect to network elements ordered and inducted after 31 May 2011 should be submitted by 1 April 2012 and then onwards the status report for each financial year should be submitted on 1 April of next financial year.
- Guidelines for monitoring and logging of all operation and maintenance commands for a period of 12 months has been prescribed. Moreover, storage of location details of subscribers has also been prescribed. Compliance report is also required to be submitted for each financial year on 1 April of the next financial year.
- The licensee is obligated to provide location details of mobile customers in the licence service area with prescribed time with certain degree of accuracy. It also needs to submit half yearly status reports in the prescribed format.

2 A financial year represents period starting from April 1 of the year and ending with March 31 of the subsequent year

C

Investment climate and foreign trade

Did you know !

India has the second-largest pool of Scientist and Engineers in the World. The country remained a major supplier of doctors and nurses to the developed countries over the years. The total number of registered allopathic doctors in the country in 2011 is 5.5 lakh and around 3.72 lakh nurses.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C.1 Foreign investment framework

The foreign direct investment (FDI) regime has been progressively liberalized during the course of the 1990s and continues to do so in the 2000s, with most restrictions on foreign investment being removed and procedures simplified. With limited exceptions, foreigners can invest directly in India, either on their own or as a joint venture.

Today, there are very few industries where foreign investment is prohibited. Moreover, investment ceilings, which are applicable in certain cases, are gradually being removed/phased out.

With the intent and objective to promote foreign direct investment through a policy framework, which is transparent, predictable, simple and reduces regulatory burden, the GoI has formulated, on a yearly basis, a consolidated FDI Policy.

Features of the GoI's consolidated FDI Policy and incentives offered by it

- With the issue of consolidated FDI policy, all earlier press notes/ press release/clarifications on FDI issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry (DIPP) stand rescinded and subsumed in the consolidated FDI Policy.
- Policy pronouncement on FDI by press notes/press releases take effect from the date of issue of press notes/press releases regardless of the procedural instructions, which shall be issued by the RBI vide relevant A.P. DIR series circulars to amend Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.
- Indian companies are permitted to issue equity shares, fully, compulsorily and mandatorily convertible debentures (FCD's) and compulsorily and mandatorily convertible preference shares (CCPS) to the non residents subject to pricing guidelines/valuation norms prescribed under FEMA.
- Issue of warrants, partly paid shares etc. require prior approval of FIPB. Issue of non-convertible, optionally convertible or partially convertible preference shares/debentures needs to comply with the

external commercial borrowing (ECB) guidelines of RBI.

- Foreign investment is calculated on the basis of ownership and control of the Indian company.
- No government approval is required for FDI in virtually all the sectors/activities, except for a small negative list formulated by the GoI.
- FIPB considers proposals for foreign participation that do not qualify for automatic approval.
- Decisions on all foreign investment proposals are usually taken within four to six weeks of submitting an application.
- Free repatriation of capital investment is permitted, provided the original investment (on a repatriable basis) was made in convertible foreign exchange. Further, free repatriation of profits on capital investment is permitted, subject to payment of taxes and other specified conditions.
- Use of foreign brand names/trademarks is permitted for the sale of goods in India.
- All royalty payments, lump sum fee for transfer of technology and for use of trademark/brand name are permitted under the automatic route without any monetary/duration limits.
- "Single window" clearance facilities and "investor escort services" are available in various states to simplify the approval process for new ventures.

C.1.1 Foreign Investment Promotion Board

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

Proposals for FDI are mandatorily required to be submitted online followed by the hard copy of the proposal. The FIPB has the flexibility to examine all the proposals in their totality, free from predetermined parameters or procedures.

The recommendations of the FIPB with respect to proposals under the ambit of the non-automatic route, involving an investment of US$266.67m (equivalent of INR12b) or less are considered and approved by the Finance Minister. Projects at an investment greater than this value are submitted by the FIPB to the Cabinet Committee on Economic Affairs for further approval.

C.1.2 Foreign investment in India

C.1.2.1 Foreign direct investment

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

- Proposals falling under the list of activities/sectors prohibited for FDI by the GoI
- Proposals falling outside the ambit of notified sectoral policy/caps
- For a list of the sectors in which FDI is prohibited/permitted with condition or sectoral cap, please see Appendix 4.

C.1.2.2 Foreign portfolio investment

Foreign institutional investors (FIIs) must register themselves with SEBI and comply with RBI's exchange control regulations.

Foreign pension funds, mutual funds, investment trusts, asset management companies, insurance or reinsurance companies, nominee companies and incorporated/institutional portfolio managers (or their power of attorney holders) are allowed to register as FIIs. FIIs can invest in securities traded in primary and secondary capital markets in India under the portfolio investment scheme. These securities include shares, debentures, warrants, units of mutual funds, government securities, treasury bills and derivative instruments.

Certain investment limits are prescribed in FII guidelines and RBI's regulations to regulate investments made by FIIs. However, these restrictions do not apply to the investments made by an FII through offshore funds, GDRs or Euro-convertible bonds.

Registration eligibility

FII guidelines require FIIs to meet certain qualifying conditions for registration. SEBI also examines whether the grant of registration is in the interest of the development of the Indian securities market.

Registration of sub-accounts

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

C.1.2.3 Foreign Venture Capital Investment Route

A SEBI-registered Foreign Venture Capital Investor (FVCI) with specific approval from the RBI under FEMA regulations can invest in Indian Venture Capital Undertaking (IVCU) or Indian Venture Capital Fund (IVCF) or in a scheme floated by such IVCFs, subject to the condition that the VCF should also be registered with the SEBI.

FVCIs can purchase equity/equity-linked instruments, debt/debt instruments, the debentures of an IVCU, or of a VCF, through an IPO or private placement or by way of private arrangement or purchase from third party. Further, FVCIs are also allowed to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations,2000, and amended from time to time.

C.1.2.4 Investment by NRIs

NRIs can invest in the shares or convertible debentures of an Indian company on a non-repatriable basis apart from investment in the form of FDI. These investments do not require FIPB approval and are not construed as FDI. NRIs cannot invest in companies that are engaged in certain financial service or agricultural/plantation activities. While the capital is non-repatriable, the dividends and interest income from such investments can be remitted as current account transactions.

C.1.3 Foreign exchange controls

Foreign exchange policy

Since 1991, the country's foreign exchange reserves have gone up from US$5b to approximately US$286.749b as on 13 July 2012.

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

With the introduction of FEMA in 1999, the objective of the GoI shifted from the conservation of foreign exchange to promoting orderly development and management of the foreign exchange market in India.

Current account transactions

The rupee is fully convertible for trade and current account purposes. Except for certain specified restrictions where RBI approval is required, foreign currency may be freely purchased for trade and current account purposes.

Capital account transactions

These transactions are not permitted unless they are specifically allowed and prescribed conditions are satisfied. Transactions specifically allowed include the following:

- Investment in India by a person resident outside India
- Acquisition and transfer of immovable property in India guaranteed by a person resident outside India, in favor of or on behalf of a person resident in India
- Import and export of currency/currency notes into/from India by a person resident outside India
- Foreign currency accounts in India of a person resident outside the country
- Remittance outside India of the capital assets (held in India) of a person resident outside India

C.2 Regional and international trade agreements

Overview

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

C.2.1 Existing trade agreements and regulatory scenario

Some of the existing key trade agreements entered into by India include:

- Comprehensive Economic Partnership Agreement (CEPA) with Japan
- Comprehensive Economic Co-operation Agreement (CECA) with Malaysia
- Comprehensive Economic Partnership Agreement (CEPA) with Korea
- India-ASEAN Trade in Goods Agreement
- Comprehensive Economic Co-operation Agreement (CECA) with Singapore
- Free Trade Agreement with Sri Lanka (Trade in Goods)
- Agreement on South Asia Free Trade Area executed by India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka
- Framework Agreement with Thailand
- Preferential Trade Agreement with MERCOSUR countries
- Preferential Trade Agreement with Chile
- Asia Pacific Trade Agreement with Bangladesh, Republic of Korea, China and Sri Lanka
- Preferential Trade Agreement with Afghanistan
- Global System of Trade Preference with 46 countries

- India Bhutan Trade Agreement
- India Nepal Trade Treaty
- Economic co-operation agreement with Finland

C.2.2 Recent developments and outlook

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

C.2.2.1 Trade Agreements under negotiation

Some of India's key prospective trade agreements that are currently under negotiation include:

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

C.2.2.2 Free Trade Agreements under feasibility study

A feasibility study for prospective Free Trade Agreements (FTAs) between two countries is undertaken on the basis of bilateral trade potential. Primarily, the key objectives of conducting a "feasibility study" for a FTA are:

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

Listed below are the Free Trade Agreements under Feasibility Study:

- India-Peru
- India-Russia
- India-Egypt
- India-Turkey

C.3 Major trading partners and leading imports and exports

Foreign trade in India

India accounts for 1.8%[3] of global trade in goods and services worldwide. In 2010, India's share of trade in commercial services reached 4.3% of global trade, compared with 2.8% five years ago. India's exports grew by 33% in 2010, making it the country with the most dynamic growth[4]. Moreover, India's exports accounted for 1.5% of World Merchandise Exports, whereas India's imports accounted for 2.2% of World Merchandise Imports in 2010. Foreign trade in the country is regulated by the Foreign Trade (Development and Regulation) Act, 1992. The Ministry of Commerce and Industry is the foremost body responsible for promoting and regulating foreign trade in India.

3 "Foreign Trade Policy 2009-14", Directorate General of Foreign Trade website, http://dgft.gov.in, accessed 15 September 2009

4 Source: World Trade Organization (WTO) International Trade Statistics 2011

C.3.1 Foreign Trade Policy (FTP)

India's FTP covers policies related to fiscal incentives, rationalized procedures, institutional changes, increased access to global markets and diversification of its export market.

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

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

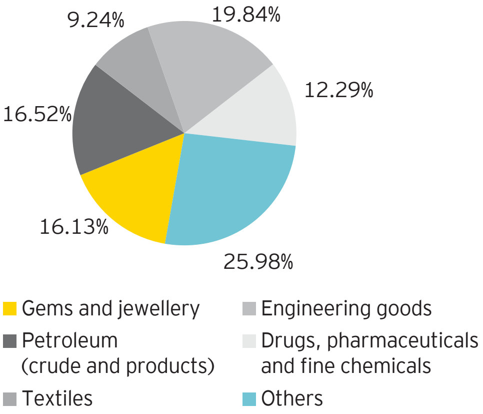
C.3.2 Exports: US$251b (FY11)

Most goods can be freely exported from India, except for a small number of prohibited items. India's key exports include gems and jewelry, petroleum, engineering goods, textiles and drugs and pharmaceuticals. The country also accounts for approximately 4.3% of the global export of commercial services.

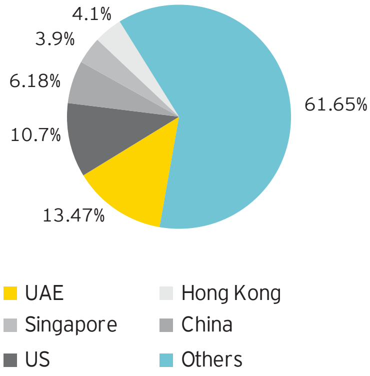
Principal export destinations: The UAE continues to be the top-most export destination for India's products ahead of the US consecutively in FY11, FY10 and FY09. Other countries include the US, China, Singapore, the Netherlands, the UK, Germany and Hong Kong.

The cumulative value of exports for FY12 was US$304.62b as against US$251.13b in FY11 registering a growth of 21.3% in dollar terms.

Top commodities among India's exports (FY 11)



Top destinations for India's exports (FY11)



Source: DGCIS, Ministry of Commerce & Industry

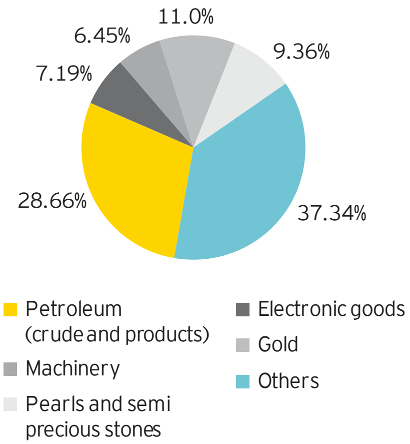
C.3.3 Imports: US$370b (FY11)

Import of all commodities is free in India, except for items regulated by any law or policy in force. Some items in the prohibited list, such as fat or oils of any animal, beef, hazardous dyes as well as ivory, cannot be imported into India. The country's key imports include petroleum, electronic goods, machinery, gold, pearls and semi-precious stones.

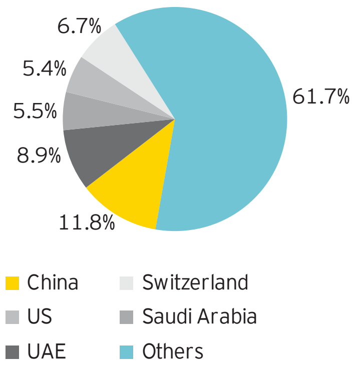
Principal countries from which India imports: China has the largest share of India's imports. Other countries include the UAE, Saudi Arabia, the US, Switzerland and Iraq.

The cumulative value of imports for FY12 was US$489.18b as compared to US$369.77b in FY11, registering a growth of 32.3% in dollar terms. The oil imports during FY12 were valued at US$154.91b

Top commodities among India's imports (FY 11)



Top countries for India's imports (FY 11)



Source: DGCIS, Ministry of Commerce & Industry

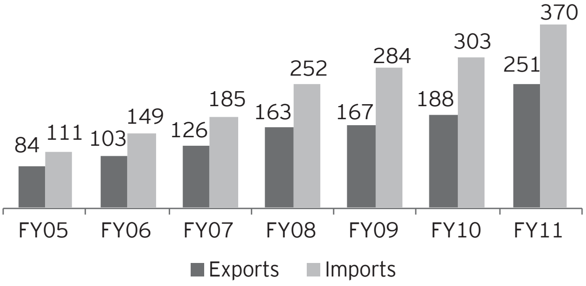
which was 46.2% higher than the oil imports of US$105.96b in FY11. Non-oil imports during FY12 were valued at US$334.2b, which was 23.7% higher than the level of such imports valued at US$263.8b in FY11.

C.3.4 Balance of trade

India's trade deficit for FY12 is estimated at US$184.56b as against US$118.63b in FY11.

Due to brisk industrialization, imports into India are increasing rapidly, recording a CAGR of 22.2% during the period FY05-FY11. Similarly exports from India are also rising rapidly recording a CAGR of 20.01% during the same period. India's export-to-GDP ratio stood at 14.91% in FY11.

Balance of trade (USD billion)



Source: DGCIS, Ministry of Commerce & Industry

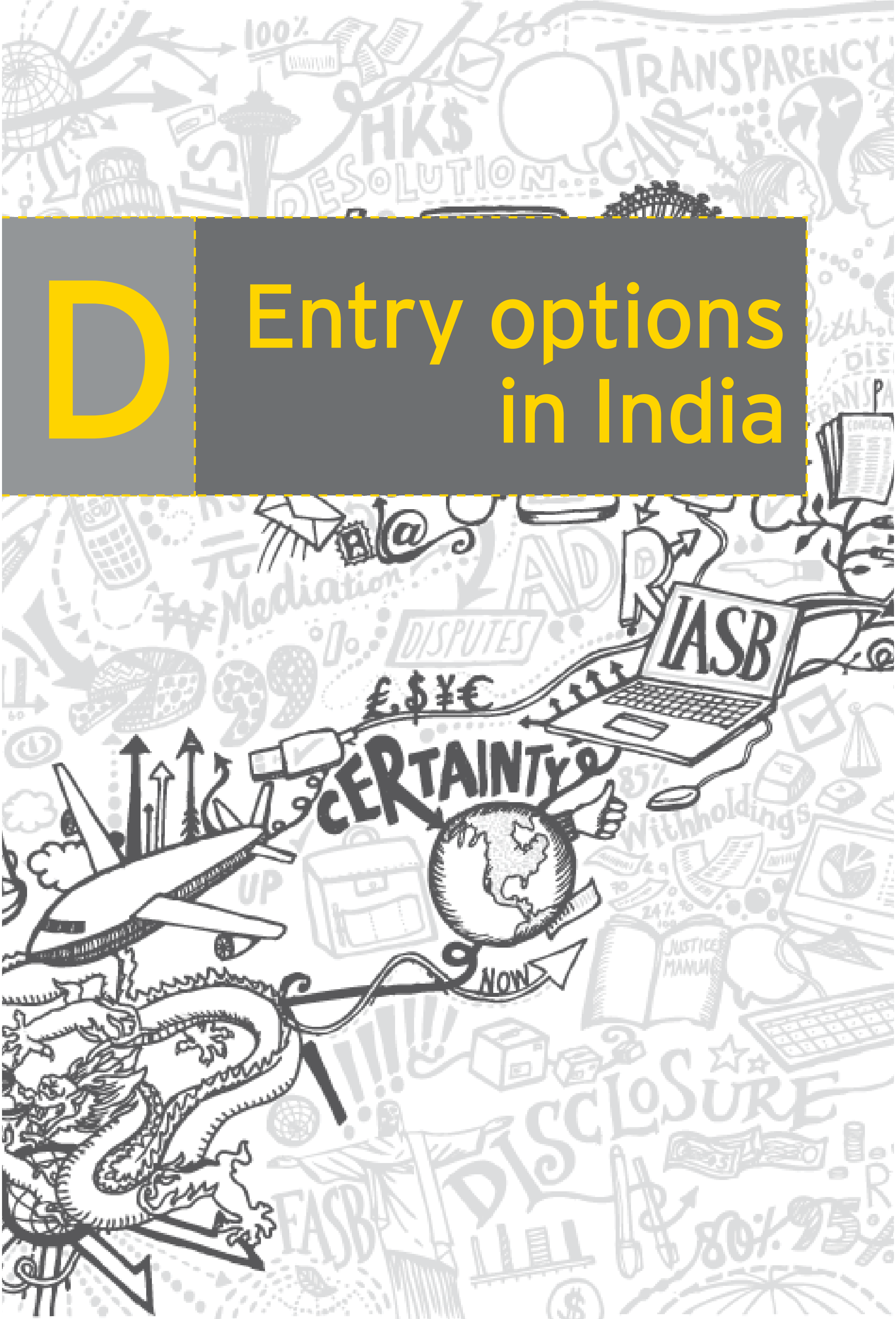
C.3.5 Tariff liberalization

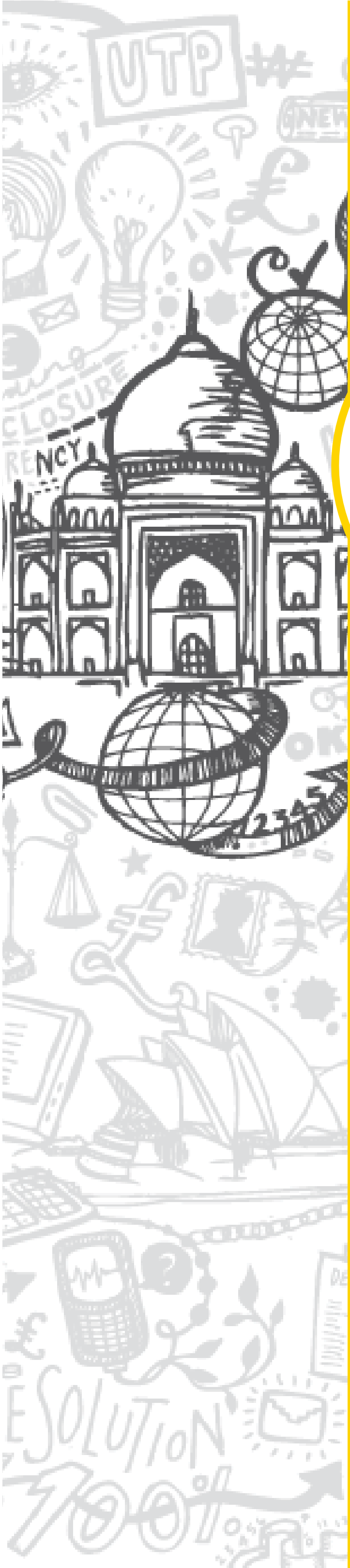
India's tariff regime has witnessed a considerable decline in rates over a period of time. Tariffs have fallen from the peak rate of 350% in 1991 to 10% in 2011. All machinery and parts imported for industrial/mining/power/irrigation purposes attract tariff duty of 7.5%-10%.

Targets of the FTP 2009-2014:

- Export growth of 15% p.a. till FY11 with the aim to achieve exports worth US$200b in FY11
- Export growth of 25% p.a. between FY12 and FY14
- Export target of US$500b by 2014
- Doubling India's current share in global trade by 2020

D Entry options in India





Did you know !

India is the third-largest economy in the world by GDP (PPP exchange rates) at US$4.46 trillion.

D.1 **Liaison office**

D.2 **Branch office**

D.3 **Local Indian subsidiary companies**

D.4 **Project office**

D.5 **Limited Liability Partnership**

D.6 **Comparative summary of entry operations in India**

Structures typically used by foreign investors in India:

D.1 Liaison office (LO)

Foreign corporations are permitted to open liaison/representative offices in India (subject to obtaining specific approval from the RBI), to undertake liaison activities on their behalf. These offices act as a communication channel between the Head Office of foreign corporations and parties in India. Such offices are normally established by foreign corporations to promote their business interests by spreading awareness about their products and also to explore opportunities to set up a more permanent presence in the country.

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

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

A LO is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the head office outside India.

Foreign insurance companies can establish liaison offices in India after obtaining approval from the IRDA, without a specific approval from the RBI. Foreign Banks can establish LO in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), RBI.

Permission to set up a LO in India is initially granted for a period of three years and this is likely to be extended from time-to-time. Upon expiry of the validity period, LO may have to either close down or be converted into a company in conformity with the FDI policy.

D.2 Branch office (BO)

Foreign corporations can open branch offices to conduct business in India and this requires a specific approval from the RBI. A foreign corporation cannot undertake any activity in India that is not specifically permitted by the RBI.

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

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

Normally, the BO should be engaged in the activity undertaken by the parent company. A branch office is not allowed to carry out retail trading, manufacturing (except manufacturing within SEZs) or processing activities in India. Branch offices are allowed to be set up in SEZs to carry out manufacturing and service activities in India without specific approval from the RBI, subject to prescribed conditions.

A BO provides the advantage of ease of operation and an uncomplicated closure. However, since such operations are strictly regulated by exchange control guidelines, and a branch may not provide a foreign corporation with the optimum structure required for its expansion/diversification plans.

D.3 Local Indian subsidiary companies

Foreign corporations can set up wholly owned subsidiary (WOS) companies in India in the form of private companies, subject to prescribed FDI guidelines. Further, foreign corporations can set up a joint venture company with an Indian or foreign partner.

FDI in a company engaged in undertaking permitted activities is allowed under the automatic route and do not require prior approval from the GoI or the RBI. However FDI in a company engaged in activities not covered under the automatic route require prior government/FIPB approval.

As compared to branch, liaison and project offices (discussed in the following paragraphs), a subsidiary company provides the maximum flexibility to conduct business in India. A company can be funded through a mix of equity, debt (both foreign and local) and internal accruals.

The exit procedure norms of companies are relatively more cumbersome in comparison to the other forms of business.

D.4 Project office (PO)

A foreign corporation that has secured a contract from an Indian company to execute a project in India can set up a project office in the country without obtaining prior permission of the RBI, provided:

- The project is funded directly by inward remittance from abroad
- The project is funded by a bilateral or multilateral International Financing Agency
- The project has been cleared by an appropriate authority
- A company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank in India for the project

However, if the above criteria are not met, the foreign entity has to approach the RBI, Central Office for approval.

D.5 Limited liability partnership (LLP)

LLP aims to provide the benefits of limited liability of a company, and at the same time allows its members the flexibility of organizing their internal management on the basis of a mutual agreement. LLP is a body corporate and legal entity, which has perpetual succession and is separate from its partners. The liability of the partners is limited to their agreed contribution to the LLP.

100% FDI is permitted in LLP with prior approval of FIPB in sectors where 100% FDI is allowed under the automatic route. However, foreign institutional investors/foreign venture capital investors are not permitted to invest in LLPs.

Capital contribution by partner in a LLP should only be in the form of cash. Further, LLPs are not permitted to avail ECBs.

LLPs with FDI are not eligible to make any downstream investments. Indian companies with FDI are permitted to make downstream investment in LLPs only if both the Indian company and the LLP operate in sectors where 100% FDI is permitted under the automatic route and no FDI-linked conditions are attached.

Conversion of company with FDI into LLP is permitted only on prior approval of FIPB/GoI.

Taxation of LLP is similar to taxation of general partnership firms, whereby the profits are taxed only in the hands of the LLP. Remuneration of individual working partners and interest payment to partners are tax deductible within prescribed limits, subject to conditions.

D.6 Comparative summary of entry operations in India (typical- can change on a case-to-case basis)

Particulars	Liaison office	Project office/ branch office	Subsidiary company	Limited liability partnership
1. Setting up requirements	Prior approval of RBI required	Prior approval of RBI required for BO (other than undertaking manufacturing and service activities in SEZs) Prior approval not required to set up PO if certain conditions are fulfilled	If activities/ sectors fall under the ambit of the automatic route, no prior approval required but only post-facto filings to be undertaken with RBI In other cases, GoI/FIPB approval required and thereafter post-facto filings required to be undertaken with RBI	Foreign investments allowed in sectors, which are under 100% automatic route with prior GoI/FIPB approval
2. Permitted activities	Only liaison/ representation/ communication role permitted No commercial or business activities allowed to be undertaken	Activities listed/ permitted by RBI allowed to be undertaken Manufacturing and processing activities (except in SEZ units) not permitted for BO PO is permitted to undertake only specific activities in relation and incidental to the execution of the project	Any activity specified in the memorandum of association of the company Wide range of activities permitted, subject to FDI guidelines	LLP should be engaged in sectors/activities for which 100% FDI is allowed without any approval LLPs with foreign investment will not be eligible to make any downstream investments

Particulars	Liaison office	Project office/ branch office	Subsidiary company	Limited liability partnership
3. Funding of local operations	Local expenses to be met out of inward remittances received from abroad from the Head Office through normal banking channels	Local expenses to be met through inward remittances from Head Office or from earnings from permitted operations	Funding to be through equity or other forms of permitted capital infusion or borrowings (local as well as overseas as per prescribed norms) or internal accruals	Contribution in the capital of the LLP should be through inward remittance or by debit to NRE/ FCNR account of the designated partner LLP 's not eligible to raise ECB
4. Limitation of liability	Unlimited liability	Unlimited liability	Liability limited to the extent of equity participation in the Indian company	Liability of the partners is limited to their agreed contribution to the LLP except in case of fraud, wrongful act, etc
5. Compliance requirements under Companies Act	Registration and periodical filing of accounts/other documents	Registration and periodical filing of accounts/other documents	Significantly high statutory compliance and filing requirements	Registration with ROC required Filing annual accounts and submitting annual statement on solvency
6. Compliance requirements under foreign exchange management regulations	Required to file an annual activity certificate (from auditors in India) with RBI In case of multiple LOs, the Nodal Office could file a combined annual activity certificate with respect to all its offices in India	Required to file an annual activity certificate (from auditors in India) with RBI In case of multiple BOs, the Nodal Office could file a combined annual activity certificate in respect of its offices in India	Required to file periodic and annual filings relating to foreign liabilities and assets, receipt of capital and issue of shares to foreign investors	No filing requirements prescribed as of now

Particulars	Liaison office	Project office/ branch office	Subsidiary company	Limited liability partnership
7. Compliance requirements under Income Tax (IT) Act	Since an LO is not permitted to undertake any business activity in India, it is typically not subject to tax in India However, LO is required to undertake annual compliance by filing annual information in the prescribed form	Liable to be taxed on income earned at the rate applicable to foreign corporations, i.e., 42.02% (including surcharge and cess) and required to file returns of income in India MAT is considered to be applicable to BO/PO at the rate of 19.44% (including surcharge and cess) of its book profits No further tax on repatriation of profits, which are permissible in both cases Indian transfer pricing regulations are applicable	Liable to be taxed on global income at 32.45% (including surcharge and cess) on a net income basis Subsidiary company liable to MAT at the rate of 20.01% (including surcharge and cess) of its book profits Dividend declared freely remittable but subject to distribution tax of 16.22% on dividends declared/ distributed/ paid, pursuant to which dividend is tax free for all shareholders Distribution tax to be paid only on amount of dividend distributed	Liable to be taxed on global income at 30.90% (including cess) on net income basis LLP liable to AMT at the rate of 19.05% (including cess) of its book profits No DDT levied on profit distribution Indian transfer pricing regulations are applicable

Particulars	Liaison office	Project office/ branch office	Subsidiary company	Limited liability partnership
			after reducing dividends received from subsidiary provided (where the distribution tax has been paid by such subsidiary company) Indian transfer pricing regulations are applicable	
8. Permanent Establishment (PE)	LOs generally do not constitute PE under DTAA due to limited scope of activities in India. However, if the activities of the LO go beyond the realm of preparatory or auxiliary character as provided for in the DTAA, a PE/taxable presence is likely to be constituted	Generally constituting a PE and a taxable presence under DTAA and domestic IT provisions	An independent taxable entity and not a PE of the foreign company	An independent taxable entity; however, whether interest in LLP results in a PE for a foreign partner, is still an ambiguous position under LLP

Particulars	Liaison office	Project office/ branch office	Subsidiary company	Limited liability partnership
9. Repatriation of funds on an ongoing basis	Typically the LO is not permitted to undertake any business activity in India; as such, there may not be any repatriations from the LO However, in case of closure of the LO, any surplus cash may be repatriated with RBI approval	Approval not required for remittance of post-tax profits to the Head Office outside India, subject to filing of requisite documents with RBI	Subsidiary does not require any approval for remittance of post-tax profits; dividends declared will be subject of distribution tax	LLP does not require any approval for remittance of post-tax profits
10. Exit mechanism	Prior approval of the RBI, ROC and the Income Tax authorities	Prior approval of the RBI, ROC and the Income Tax authorities	Exit can be through sale of shares or winding up or liquidation Winding up/ liquidation can be a long drawn, complex process	Foreign partner permitted to transfer its stake in LLP/dissolve the LLP

D.7 Comparative matrix of various forms of business

Particulars	Liaison office	Project office/ branch office	Subsidiary company	Limited liability partnership
1. Legal status	Represents the parent company	Extension of parent company	Independent legal status	Independents legal status
2. Process of setup	Easy	Easy	Complex	Moderately complex
3. Scope of activities	Liaison activities	Restricted scope	Significant flexibility	Activities for which 100% FDI is allowed without any approval
4. Compliance requirements	Limited	Limited	High	High
5. Income tax rate	Generally, no tax liability, since it cannot carry out any commercial or income earning activities	42.02% on a net income basis (40% plus 2% surcharge plus 3% cess there on) If MAT is applicable, it is levied at 19.44% of its book profits (18.5% plus 2% surcharge and 3% cess)	32.45% on a net income basis (30% plus 5% surcharge plus 3% cess there on) If MAT is applicable, it is levied at 20.01% of its book profits (18.5% plus 5% surcharge plus 3% cess)	30.90% on a net income basis (30% plus 3% cess there on) If AMT is applicable, it is levied at 19.05% of its book profits (18.5% plus 3% cess)
6. Ease of exit	Easy	Easy	Complexity will depend on type of strategy adopted	Complexity will depend on type of strategy adopted

E

Funding of Indian businesses

Did you know !

India is the largest producer of films in the world. Largest in the world in terms of ticket sales and second-largest in terms of revenue, with 3.3 billion tickets sold every year and in a transition of becoming a US$5 billion industry in the next two years.

A foreign corporation can fund its Indian subsidiary through the following options:

E.1 Equity share capital

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

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

A non-resident entity can infuse funds in an Indian LLP as contribution to capital subject to the conditions prescribed in the FDI. Capital in a LLP can be repatriated by way of withdrawal of capital or transfer/assignment of partnership interest or through winding up of LLP.

Equity shares need to be issued by the Indian company within 180 days of receipt of funds from the foreign investor.

E.2 Preference share capital

Another option for investors to invest in a company in India is through the issue of preference share capital. Foreign investments through convertible preference shares, which are compulsorily convertible into equity shares, are treated as FDI. Preference shares that are not compulsorily convertible into equity shares are construed as ECBs and hence, need to conform to the ECB guidelines. The following regulatory laws are relevant:

- According to Indian Company Law, preference shares have to be redeemed within a period of 20 years, and issue of preference shares is permissible only as a rupee-denominated instrument.
- The rate of dividends paid to non residents should not exceed the limit prescribed by the MoF (currently fixed at 300 basis points above State Bank of India's prime lending rate).
- Preference shares need to be issued by the Indian company within 180 days of receipt of funds from the foreign investor.

E.3 Debentures and borrowings

Companies can raise funds by issuing debentures, bonds and other debt securities. They can also raise funds by accepting deposits from the public. Debentures can be redeemable; perpetual, bearer or registered; and convertible or non-convertible. Foreign investments through convertible debentures, which are convertible into equity shares, are treated as FDI. Debentures that are not compulsorily convertible into equity shares are construed as ECBs and hence, need to conform to ECB guidelines.

Compulsorily convertible debentures need to be issued by the Indian company within 180 days of receipt of funds from the foreign investor.

E.3.1 External commercial borrowings

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

ECBs up to US$750m for rupee and foreign currency expenditure fall under the ambit of the automatic route, subject to compliance with the ECB policy. ECBs can be availed by corporate organizations registered under the Companies Act and Infrastructure Finance Companies, except in the case of financial intermediaries, and must be availed from internationally recognized sources such as international banks and capital markets, multilateral financial institutions, export credit agencies, suppliers of equipment, foreign collaborators and foreign equity holders (subject to certain minimum equity holding requirements in the borrower's company). ECB proceeds are subject to end-use restriction and can, under no circumstances, be used for on-lending, investment in a capital market, acquiring a company, working capital, general corporate purposes, repayment of existing rupee loan and real estate. In this context, redeemable preference shares/optionally convertible shares, partially convertible preference shares and debentures are considered as ECBs, and hence also need to conform with the ECB guidelines.

The minimum average maturity period of the loan will be three years for a loan amount of up to US$20m. For ECBs above US$20m but up to US$750 m, the minimum average maturity period will be five years.

The following are the all-in-cost ceilings for ECBs:

Average maturity period	All-in-cost ceiling over six months London Interbank Offered Rate (LIBOR) applicable up to 30 September 2012
Three years and up to five years	350 basis points
More than five years	500 basis points

Proceeds from ECBs are allowed to be retained outside India (in prescribed liquid assets) or brought into rupee accounts in India pending their utilization. An empowered committee of RBI decides all the cases outside the purview of the automatic route.

Corporate organizations registered under the Companies Act have been granted general permission for conversion of ECBs in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to certain conditions and reporting requirements contained in the FDI policy.

LLPs are currently not permitted to avail ECBs.

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

E.4 ADRs/GDRs/FCCBs

Qualifying Indian companies are allowed to raise equity capital overseas through the issue of American Depository Receipts (ADRs)/ Global Depository Receipts (GDRs)/Foreign Currency Convertible Bonds (FCCBs). Where the issue of ADRs, GDRs or FCCBs by a company is likely to increase the permissible investment limits of FDI under the automatic route, or where such an investment is made in the form of a project that requires government approval, the company must seek the approval of the FIPB.

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

F Repatriation of funds

Did you know !

Demographically, India is a country of 1.2 billion people with more than two-third of its population being less than 35 years of age.

F.1 Repatriation of capital

F.1.1 Royalties and technical know-how

F.1.2 Technical service fees

F.2 Repatriation of dividends

F.2.1 Consultancy services and pre-incorporation expenses

F.3 Other remittances

F.1 Repatriation of capital

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

F.1.1 Royalties and technical know-how

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

F.1.2 Technical service fees

Companies can hire the services of foreign technicians and make remittances for technical service fees, subject to certain conditions, regardless of the duration of the engagement of a foreign national in any calendar year and subject to tax withholding, if any.

F.2 Repatriation of dividends

Profits and dividends earned from an Indian company are repatriable after payment of dividend distribution tax due on them. Permission of the RBI is not required to carry out remittances, subject to compliance with certain specified conditions.

Profits of LLP are repatriable without any payment of taxes and without any regulatory approval.

F.2.1 Consultancy services and pre-incorporation expenses

Consultancy services

Remittance of up to US$1m per project for any consultancy service procured from outside India can be made without prior RBI approval. Further, for entities in the power, telecommunications, railways, roads including bridges, sea ports and airports, industrial parks, urban infrastructure (water supply, sanitation and sewage projects) sector, this limit is extended to US$10m per project.

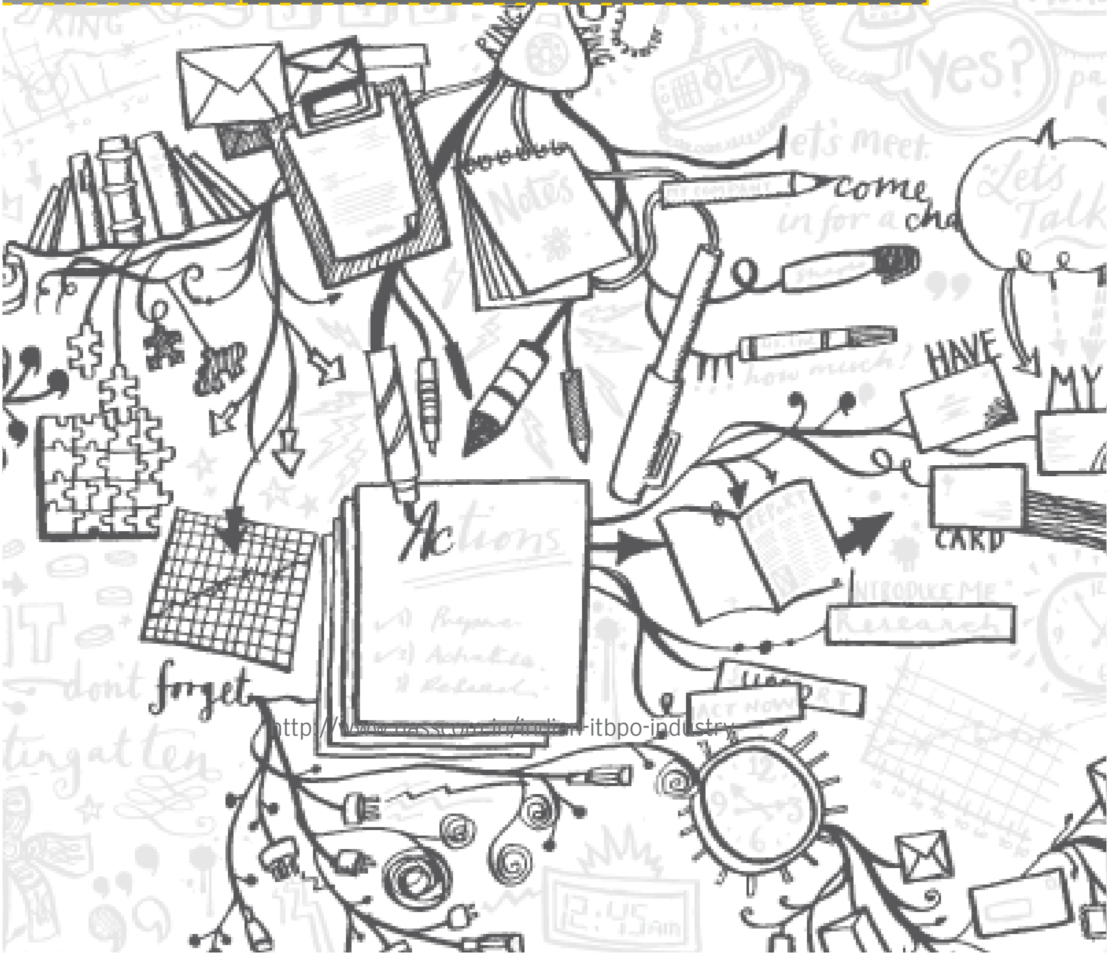
Pre-incorporation expenses

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

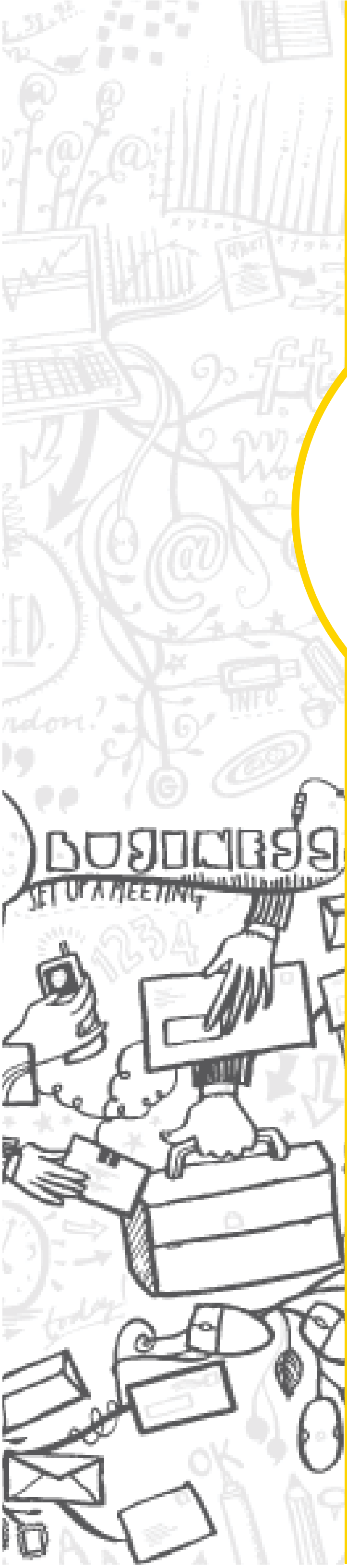
F.3 Other remittances

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

G Forms of business enterprise



http://www.nasscom.in/indian-itbpo-industry



Did you know !

Available international comparisons show that India has the second-largest number of telephone subscribers in the world (among 222 countries). Mobile tariffs in India are the second-lowest in the world after Bangladesh.

G.1 Sole proprietorship

G.2 Partnerships

G.3 Limited Liability Partnership

G.1 Sole proprietorship

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

- There is ease of formation because it does not require elaborate legal formalities. There is no formal agreement required since it is a one-man show. In addition, it is not necessary to register such a firm. However, the owner can be required to obtain a license from the local administration that is specific to the line of business.
- The owner has complete control over all the aspects of the business and takes all the decisions although he/she may hire employees/support staff for assistance in day-to-day activities.
- Profit or loss from the operation is solely borne by the proprietor.
- There is no legal existence separate from the owner of the business.
- The liability of the proprietor is unlimited, i.e., it extends beyond the capital invested.
- A non-resident Indian (NRI) or a person of Indian origin (PIO) residing outside India are allowed to do business in India through a sole proprietorship concern. The investment should be made on non–repatriation basis subject to satisfying certain other conditions.
- However, an NRI or PIO cannot invest in a proprietary concern, which is engaged in any agricultural/plantation, real estate business or print media sector even for non-repatriation basis.
- Further, the investment can be made either by inward remittance or out of NRE or FCNR (B) account maintained with the authorized dealers or authorized banks.

- NRIs or PIOs can make investment with repatriation benefits after obtaining approval from the RBI.
- A person resident outside India other than NRIs or PIOs can make investment in sole proprietorship concerns after obtaining approval from the RBI.
- Alternate minimum tax is applicable to sole proprietorship from FY13, i.e., assessment year 2013-14.

G.2 Partnerships

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

- A partnership is easy to form as no cumbersome legal formalities are required — registration is also not essential. However, if the firm is not registered, it is deprived of certain legal benefits. The Registrar of Firms is responsible for registering partnership firms.
- The minimum number of partners in a partnership must be 2, while the maximum number can be 10 in the case of the banking business and 20 in all other types of businesses. Further, specific regulatory approvals are likely to be required for partnerships engaged in banking operations.
- The firm has no separate legal existence of its own, i.e., the firm and the partners are one in the eyes of the law.
- In the absence of any agreement to the contrary, all the partners have a right to participate in the activities of the business.
- Ownership of property usually carries with it the right of management. Every partner, therefore, has a right to share in the management of the business.

- The liability of the partners is unlimited. Legally, the partners are said to be jointly and severally liable for the liabilities of the firm. This means that if the assets and property of the firm are insufficient to meet its debts, the creditors can recover their loans from the personal property of the individual partners.
- There are restrictions on transfer of interest, i.e., none of the partners can transfer his/her interest in the firm to any other person (except to the existing partners) without the unanimous consent of all the partners.
- The firm has a limited span of life, i.e., legally the firm must be dissolved on the retirement, bankruptcy or death of any partner or in the event one of the partners becomes insane.
- An NRI or a PIO residing outside India is allowed to invest in a partnership firm in India. The investment should be made on a non-repatriable basis subject to satisfying certain other conditions.
- However, an NRI or a PIO cannot invest in a partnership concern, which is engaged in any agricultural/plantation, real estate business or print media sector.
- NRIs or PIOs can make investment in partnership firm with repatriation benefits after obtaining approval from the RBI.
- A person resident outside India, other NRIs or PIOs, can make investment in partnership firm after obtaining approval from the RBI.
- Alternate minimum tax is applicable to partnership firms from FY13, i.e., assessment year 2013–14.

G.3 Limited Liability Partnership (LLP)

LLP aims to provide the benefits of limited liability of a company, and at the same time allows its members the flexibility of organizing their internal management on the basis of a mutual agreement. LLP is a body corporate and legal entity, which has perpetual succession and is separate from its partners. The liability of the partners is limited to their agreed contribution to the LLP.

100% FDI is permitted in LLP with prior approval of FIPB in sectors where 100% FDI is allowed under the automatic route. However, foreign institutional investors/foreign venture capital investors are not permitted to invest in LLPs.

Capital contribution by partner in a LLP should only be in the form of cash. Further, LLPs are not permitted to avail ECBs.

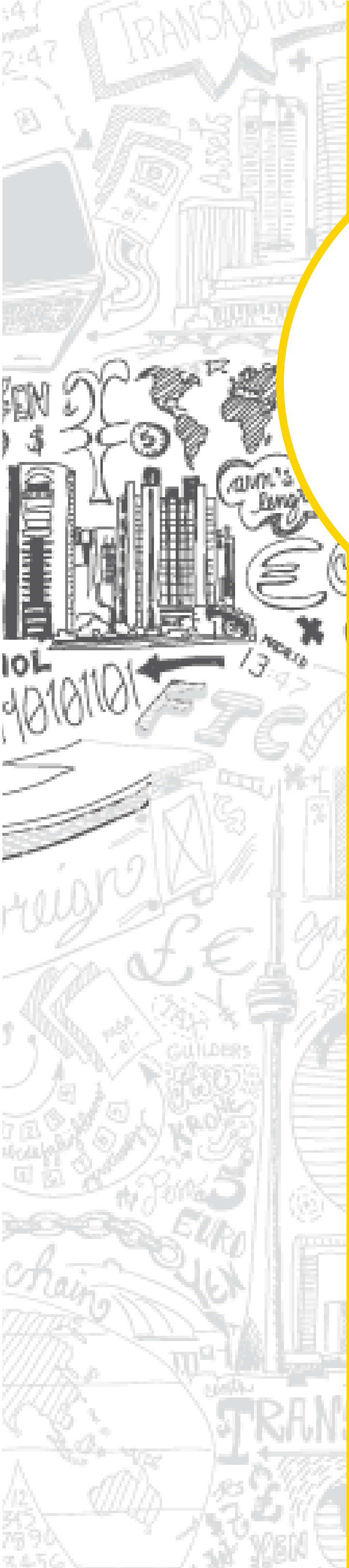
LLPs with FDI are not eligible to make any downstream investments. Indian companies with FDI are permitted to make downstream investment in LLPs only if both the Indian company and the LLP operate in sectors where 100% FDI is permitted under the automatic route and no FDI-linked conditions are attached.

Conversion of company with FDI into LLP is permitted only on prior approval of FIPB/GoI.

Taxation of LLP is similar to taxation of general partnership firms, whereby the profits are taxed only in the hands of the LLP. Remuneration of individual working partners and interest payment to partners are tax deductible within prescribed limits, subject to conditions.

H Companies


controversy
interest
TAX
FASB
CREDIT
INBOUND
OUTBOUND
Transfer Pricing
PLANNING
Supply



Did you know !

Globally, India ranks third in terms of manufacturing pharmaceutical products by volume. The pharmaceutical market grew at 15.7% during December 2011. The Indian pharmaceutical market is expected to touch US$74 billion sales by 2020 from US$11 billion in 2011.

Companies incorporated in India and foreign corporations with a presence in India are regulated by the provisions of the Companies Act. The Registrar of Companies (RoC) and the Company Law Board (CLB), both working under the Ministry of Company Affairs (MCA), have been entrusted with the responsibility to ensure compliance with the provisions of the Companies Act. An amendment was passed under the Companies Act, through which it is proposed to set up a National Company Law Tribunal (NCLT) to take over the functions hitherto performed by the CLB as well as to discharge various other functions under the Companies Act.

H.1 Types of companies

Companies in India can be broadly classified as public and private companies. A company can be registered with its liability as limited or unlimited. In the case of former, the personal liability of the members is limited to the amount unpaid on their shares, while in the latter case their personal liability is unlimited by a pre-decided nominated amount. A company can also be registered as a guarantee company.

A company established for a charitable purpose is allowed to be formed under the provisions of section 25 of the Companies Act. The profit generated from the activities of such a corporation is not allowed to be distributed to its shareholders, but must be used for the purpose for which it was established.

Private companies

A private company incorporated under the Companies Act has the following characteristics and is therefore popular in the case of small and medium-sized businesses.

- The right to transfer shares is restricted.
- The maximum number of shareholders is limited to 50.
- No offer can be made to the public to subscribe to its shares and debentures.
- No invitation or acceptance of deposits from persons other than members, directors or relatives is allowed.

A private company is required to have a minimum paid-up capital of approximately US$1,814 (equivalent to INR 0.1m) with a minimum of two directors and two members.

Public companies

A public company is defined as one that is not a private company. A subsidiary of an Indian public company is also treated as a public company. A public company is required to have a minimum paid-up capital of approximately US$9,070 (equivalent to INR0.5m) with a minimum of seven members and three directors.

Note: There are certain requirements with regard to the name of an Indian subsidiary. In the event the subsidiary's name contains the word "India" within its name not being the first word of the name, the minimum authorized capital needs to be approximately US$9,070 (equivalent to INR0.5m). Similarly, there are certain restrictions for some other specific names used to incorporate an Indian subsidiary.

Some basic comparisons between private and public companies are given in the table below.

S No.	Particulars	Private company	Public company
1.	Minimum number of members	2	7
2.	Maximum number of members	50	Unlimited
3.	Minimum number of directors	2	3
4.	Maximum number of directors	According to the Articles of Association of the company	12 (can be increased with the GoI's approval)
5.	Minimum paid-up capital requirement in general	INR0.1m (US$1,814)	INR0.5m (US$9,070)
6	Managerial remuneration	Payable with approval of Board of directors	In case of listed public companies and their subsidiaries, approval of Central Government is required if the remuneration payable is beyond the limits specified under the Companies Act. However, in case of subsidiaries of listed public companies, approval from Central Government is not required if certain conditions are satisfied. In case of other unlisted public companies and private limited companies, which are subsidiaries of such companies, remuneration is payable with approval of the Board of Directors and the shareholders.

H.1.1 Share capital

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

Capital issued by public listed companies needs to comply with the guidelines issued by SEBI, a body that regulates companies that have a public interest and are listed on the Indian stock exchanges.

H.1.2 Board of Directors, Directors

Board of Directors

The management of a company is entrusted to its Board of Directors (Board). The Board acts on behalf of its shareholders and has an overall responsibility for the company's business activities. It acts on behalf of the shareholders for the company's day-to-day operations and seeks the confirmation/approval of the shareholders on major decisions. The Companies Act prescribes more restrictions to the power of the Board of Directors, in case of public companies.

However, shareholders can restrict the powers of the Board by passing specific resolutions. The Board may also delegate its powers to the committee of directors or managing directors by passing board resolutions to this effect.

Directors

A company can appoint Executive, Non-Executive and Independent Directors. An Executive Director can be a Managing Director or a Whole time Director.

Whole time/Managing directors

- Every public or private company, which is a subsidiary of a public company with a paid-up share capital of INR50m is required to appoint a Managing Director or Whole time Director. The Companies Act prescribes certain conditions that need to be fulfilled for the appointment of a Managing Director or a Whole time Director. In the event the conditions are not adhered to, the company has an option to seek the approval of the Central Government.

There is no such requirement in the case of a private limited company.

Independent directors/Non-Executive directors

- The GoI has introduced the concept of Independent directors for public listed companies. The limits prescribed for these independent directors ranges from half to one-third, depending on whether the company has an Executive Chairman. The concept of independent directors has been enabled to create an external control on the operations of a company and safeguard the interest of the public.

H.1.3 Audit committees, DIN, meetings and e-filling

Audit committees

Every public company with a paid-up capital of INR50m or more should have an audit committee to ensure the integrity of the company's financial management. Other than the management's nominees, a company's auditor also needs to be present during committee meetings.

Director Identification Number (DIN)

DIN is a unique identification number allotted to an existing director of a company or to an individual who is to be appointed as a director in the organization. DIN is now mandatory in the case of any individual, who is an existing director of a company or is to be appointed on the board of a company as director.

The process of allotment of DIN has been simplified by the Ministry of Corporate Affairs and can t take place online upon paying a nominal fee.

Meetings

The Companies Act requires companies to hold meetings at regular intervals and pass resolutions, ordinary or special, according to requirements. The company is required to hold a minimum of one board meeting every three months ,i.e., at least four board meetings in a calendar year and at least one shareholders' meeting as an Annual General meeting. Any meeting called by a specific number of members is known as an extraordinary general meeting

e-Filing and digital signature

The MCA has amended the provisions of filing documents with the RoC and now accepts filings through electronic media. It also provides authentication in the forms by authorized signatories using digital signatures to affix their signatures, issued by authorized agents registered with the Ministry. Thus, the process has eliminated the need for manual filings and also reduced the paper load in RoC offices.

H.2 Financial reporting and auditing

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

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

Statutes/bodies governing reporting requirements

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

H.2.1 Sources of accounting standards and convergence with IFRS

India's accounting standards are based on International Accounting Standards (IAS), now renamed International Financial Reporting Standards (IFRS). Phase 1 entities were preparing to converge with IFRS with effect from 1 April 2011. To fulfil this, the MCA notified 35 Ind-ASs. Further, the MCA stated that the notified Ind-AS will be applied in a phased manner, after resolving various issues including tax-related ones. This indicates that Ind-AS is not likely to apply from the dates announced in the original roadmap, and at the same time, the date of applicability is not fixed and is made subject to satisfactory resolution of tax issues.

With a view to enable Indian entities to present IFRS-compliant financial statements, the ICAI and the MCA as well as the GoI, had announced their commitment to achieving complete convergence with IFRS for accounting periods commencing on or after 1 April 2011.

MCA has decided that there will be two separate sets of accounting standards:

(i) India's accounting standards converged with the IFRS known as Ind AS

Ind AS are the standards, which are being converged by eliminating the differences of the India's accounting standards vis-à-vis IFRS. These standards shall be applied by the specified companies covered under Phase 1 to Phase 3 implementation. Phase 1 is applicable to specified companies from 1 April 2011. However, this has been postponed and no effective date has been notified as yet. The GoI is in the process of finalization of Ind AS.

(ii) India's accounting standards

The companies not falling within the threshold limits prescribed for IFRS compliance in the respective phases shall continue to apply these standards in the preparation and presentation of financial statements.

H.2.2 Significant fundamental concepts

Accounting methodology

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

All significant accounting policies should be disclosed in one separate statement or schedule to financial statements.

Inflation accounting is not used in India; accounts are prepared by using traditional cost accounting conventions.

Change in accounting policy

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

H.2.3 Disclosure requirements, reporting and filing requirements

Disclosure requirements

General requirements — financial statements should consist of the following:

- Balance sheet
- Profit and loss account
- Notes to the financial statement
- Auditor's report
- Cash-flow statement (not required for small- and medium-sized entities)

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

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

Financial statements must be signed and dated by the Manager or the Company Secretary, of the company, if any, and by at least two directors, including a Managing Director, if any, apart from the statutory auditor.

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

Auditors' report: The auditors' report must include an opinion on the financial statements of the company and must state whether the company and its branches have maintained its books of account as required by law, and whether these books agree with its balance sheet and profit and loss account.

In addition to the above, the auditors are also required to report on matters stated in the Companies (auditor's report) Order, 2003 issued by the Central Government, which includes inter alia reporting on various specific aspects of internal control, inventory valuation, payment of statutory dues, description of contingent/contested liabilities or fraudulent transactions by or on the company and utilization of long-term/short-term funds.

Interim financial reporting requirement of listed entities

Quarterly financial statement: Each listed entity is required to provide its unaudited financial results on a quarterly basis, within 45 days from the end of a quarter, in the specified format, announce this in the newspapers and subject the results to a limited review by its statutory auditors.

Where there is a variation between the unaudited quarterly or year-to-date financial results and the results amended pursuant to limited review for the same period, with respect to net profit or loss after tax or exceptional or extraordinary items provided in the format, varies by 10% or approximately US$18,139 (equivalent to INR1m), whichever is higher, the entity must explain the reasons to the stock exchange.

Secretarial audit: Issuer companies are to subject themselves to a secretarial audit that is to be undertaken by a qualified chartered accountant or a company secretary for the purpose of reconciliation of the total admitted capital with the depositories and the total issued and listed capital.

The issuer companies are to submit the audit report on a quarterly basis to the stock exchange(s) where they are listed. Any difference observed in the admitted, issued and listed capital shall immediately be brought to the notice of SEBI and both the depositories by the stock exchanges.

Annual reporting requirements

Reporting: Companies are required to comply with various reporting requirements, which are higher for public companies than for private organizations. Significant documents that need to be filed include the annual return, balance sheet, profit and loss account, as well as the auditor's and directors' reports and charges. The formats of the balance sheet and the profit and loss account are prescribed by the Companies Act.

Annual financial statements must be sent to all shareholders and debenture holders at least 21 days before the annual general meeting (AGM). Listed companies must send their annual financial statements to the stock exchange, where they are listed. In addition, they need to publish their quarterly financial statements.

Dividend payment: Companies with shares are allowed to pay dividends only out of their profits after providing for depreciation on fixed assets in the manner prescribed and certain minimum amounts that have been transferred to the company's reserves. Further, payment of dividends is permitted from the company's accumulated reserves, subject to its compliance with certain prescribed rules.

Dividends can be only recommended by the Board of Directors and require shareholder approval — dividends are declared in percentage terms and can be declared more than once a year.

Filing requirements

After the annual financial statements have been presented at the AGM, copies must be electronically filed with the Registrar of Companies within 30 days of their adoption by the shareholders.

On 1 April 2011, the MCA in India posted a circular on its website mandating a certain class of companies (Phase 1) to file balance sheets and profit and loss accounts for the year 2010–11 onward by using eXtensible Business Reporting Language (XBRL). The financial statements required to be filed in XBRL format will be based upon the taxonomy on XBRL developed for the existing schedule VI and non-converged accounting standards notified under the Companies (Accounting Standards), Rules, 2006 (as amended).

The GoI has recently come up with an Exposure Draft on XBRL for Commercial and Industrial entities for filing their balance sheet and profit and loss account for the financial year 2011–12 based on revised Schedule VI.

Requirement for different industries

The GoI requires certain manufacturers to maintain their cost accounts and can order an audit by a qualified cost auditor to conduct this procedure.

Banking, electricity and insurance companies are governed by special Acts apart from the Companies Act.

Audit requirements

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

The first auditor of the company is usually appointed by its directors. The shareholders appoint subsequent auditors at every AGM and fix their remuneration. The Companies Act sets out the matters on which an auditor has to report.

All companies with gross revenues in excess of approximately US$108,834 (equivalent to INR6m) must get their accounts audited under the IT Act. The Companies Act also grants the GoI the power to order other audits, including cost audits and investigations. In addition, the auditors of every listed company or company with paid-up capital and reserves exceeding approximately US$90,695 (equivalent to INR5m) at the commencement of the financial year, or average annual sales above approximately US$906,947 (equivalent to INR50m) for three consecutive financial years immediately preceding the relevant financial year, are required to comment on the internal audit system of the company.

Value Added Tax audit

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

Generally, VAT audit is applicable to all dealers who are liable to pay VAT provided their turnover of either sale or purchase exceeds a specified limit. Further, VAT audit is also mandatory for specified categories of dealers, as prescribed by the state legislation.

I

Economic laws and regulations

Did you know !

India is the world's second-largest producer of tea and the largest consumer of tea accounting for around 28% of global output and 14% of trade. There are around 1,600 tea estates in India and the industry employs more than two million people. Also India is among the top five producers of milk, sugar, cotton, coffee, spices, rubber, silk, and fish.


COMPLIANCE

I.1 Indian Contract Act, 1872 (ICA)

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

I.2 Protection of intellectual property rights

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

As a signatory to the GATT and trade-related aspects of intellectual property rights (TRIPS) agreements, and in its capacity of being a member of WTO, India is required to lay down minimum norms and standards with respect to the following areas of intellectual property:

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

I.2.1 Copyrights

India's copyright law, laid down in the Indian Copyright Act, 1957 and amended by the Copyright (Amendment) Act, 2012, fully reflects the Berne Convention on copyrights to which India is a party.

Additionally, India is also party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and to the Universal Copyright Convention. It is also an active member of the World Intellectual Property Organisation (WIPO) at Geneva.

According to the Copyright Act, 1957, copyright subsists in original literary, dramatic, musical and artistic work, a cinematographic film or a sound recording.

India's copyright law has been amended from time to time to keep pace with changing requirements. The amendments made to copyright laws have resulted in comprehensive changes and brought them in line with new developments in satellite broadcasting, computer software and digital technology. Further, the Copyright Amendment Act, 2012 amends the copyright law to protect rights of authors of lyrics, musical works, etc. and also makes certain changes in law relating to Compulsory Licensing and Statutory Licensing.

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

I.2.2 Trademarks

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

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

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

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

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

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) was implemented in December 1999 and the Geographical Indications of Goods (Registration and Protection) Rules under the GI Act was put in effect in March 2002.

The GI Act has been introduced to ensure compliance with the TRIPS regime. It seeks to provide for the registration and enhanced protection of geographical indications related to goods in India, is designed to protect the use of such geographical indications from infringement by others, and to protect consumers from deception. The GoI has established the Geographical Indications Registry, with all-India jurisdiction, at Chennai in Tamil Nadu, where right-holders can register their geographical indications.

I.2.4 Patents

The Indian Patents Act, 1970 provides for the grant, revocation, registration, license, assignment and infringement of patents in India. Any infringement of a patent is punishable under the terms of this Act.

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

It is pertinent to note that India also recognizes the concept of "compulsory licensing" of patents under which the Controller of Patents can permit an interested party to commercially exploit the patent for a period of three years after being granted.

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

I.2.5 Designs Act, 2000

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

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

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

I.3 Labor laws

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

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

I.3.1 Industrial Disputes Act, 1947

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

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

I.3.2 Trade Unions Act

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

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

I.3.3 Plantation Labour Act, 1951

The Plantation Labour Act, 1951 (PLA)[1] provides for the welfare and safety of plantation labor and regulates the condition of work in plantations. PLA is administered by state governments and is applied to any land used as plantations, which measures 5 hectares or more and in which 15 or more persons are working. The state governments are, however, free to declare any plantation land less than 5 hectares or with less than 15 persons working on it to be covered by the PLA. It further prohibits employment of children in any plantation.

I.3.4 Payment of Bonus Act, 1965

The Payment of Bonus Act, 1965 (PBA) provides for the payment of bonus to persons employed in certain establishments on the basis of profits or on production or productivity, as well as for matters connected therewith. PBA is applicable to every factory and other establishments in which 20 or more persons are employed on any day during an accounting year, excluding some categories of employees enumerated therein. PBA mandates payment of bonus to every employee in an accounting year, in accordance with the provisions of this legislation, provided that he or she has worked in the establishment for not less than 30 days.

PBA provides for the appointment of inspectors by the government by notification. These inspectors can ask the employer to furnish any information that may be considered necessary by them. They can also ask the employer to submit books and registers and other documents related to the employment of persons or relating to the payment of salaries, wages or bonus.

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

1 As amended by The Plantations Labour (Amendment) Act, 2010

I.3.5 Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 (PGA) provides a scheme for the payment of gratuity to all employees earning wages to do any skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are expressed or implied, and whether or not such employees are employed in a managerial or administrative capacity.

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

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

I.3.6 Workmen's Compensation Act, 1923

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

The WCA also prescribes conditions under which compensation can be denied to an employee.

I.3.7 Industrial Employment (Standing Orders) Act, 1946

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

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

I.3.8 Minimum Wages Act, 1948

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

I.3.9 Payment of Wages Act, 1936

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

The PWA lays down that a wage period exceeding one month should not be fixed and payment of wages must be made on a specific day after the last day of the wage period. All wages must be paid in current legal tender, but it can also be paid by cheque or credited to the bank account of the employed persons. The main beneficiaries of the PWA are, however, those who earn wages below the prescribed limit per month.

Under the PWA, defaulting employers are advised to pay full wages in time, and in the event of non-adherence to this advice, there are provisions of prosecutions as well.

I.3.10 Factories Act, 1948

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

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

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

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

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

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

The GoI has prescribed various penalties for any default, which the employer is likely to make with relation to payments including contributions, arrears, accumulation and administrative charges to the fund and/or also prescribes imprisonment.

The amendment of 1 October 2008 has extended the applicability of the EPFMPA and the schemes therein for an additional category of employees, i.e., international workers, mandating compulsory participation of such employees.

I.3.12 Maternity Benefit Act, 1961

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

The MBA prescribes penalties for contravention of its provisions by employers.

I.3.13 Employees State Insurance Act, 1948

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

I.3.14 Contract Labour (Regulation and Abolition) Act, 1970

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

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

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

Recently many companies have successfully used the voluntary retirement scheme in an effort to restructure their operations or to exit from a particular line of business. Retraining schemes for workers have also been used to increase their productivity and competitiveness.

I.4 Anti-trust regulations

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

- The Competition Act, 2002 (No. XII of 2003), which has repealed[2] and replaced the erstwhile "The Monopolies and Restrictive Trade Practices Act, 1969"
- Certain provisions under the Companies Act
- The Consumer Protection Act, 1986

2 Vide Notification No. S.O.2204(E) dated 28 August 2009 with effect from 1 September 2009

I.4.1 The Competition Act, 2002 (Competition Act)

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

However, the primary objective of the MRTP Act was to curb monopolies and not to promote competition. In light of this, the Indian legislature enacted the Competition Act, which repealed and replaced the MRTP Act and seeks to achieve the following objectives:

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

According to provisions of the Competition Act, the GoI has established the Competition Commission of India (CCI) headquartered as New Delhi for adjudication on any information/reference against any anti-competitive practice along with giving approvals for combinations. The Government has also established the Competition Appellate Tribunal headquartered in New Delhi with effect from 15 May 2009 to hear and settle appeals against the orders of the CCI and also to adjudicate on the claims of compensation that is likely to arise from the findings of the CCI or the orders of the Appellate Tribunal.

The Competition Act seeks to:

- Prohibit anti-competitive agreements
- Prohibit abuse of dominant position
- Regulate combination (acquisition, mergers and amalgamations etc.) that causes or are likely to cause appreciable adverse effect on competition.
- Entrust the CCI with the responsibility of undertaking competition advocacy

The Competition Commission of India (CCI) had, on 11 May 2011, issued the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations). The said regulations were further amended from time to time, latest on 23 February 2012. The Combination Regulations together with the relevant provisions of the Competition Act, regulates in India (a) acquisitions; (b) acquiring of control; and (c) mergers or amalgamations that exceed specified thresholds. Transactions falling within the purview of CCI will now require mandatory pre-notification to CCI (subject to the exemptions and transitional provisions as provided in the Combination Regulations) and will not come into effect until 210 days or by order of the CCI, whichever is earlier. According to amended provisions of the Combination Regulations, the CCI has provided relief from mandatory pre-notification in case of intra-group transactions, shares or voting rights acquired through buy back, bonus issue, right issue or share-split and also increased the maximum cumulative threshold limit from 15% to 25% of total share capital/voting rights. Fee payable to CCI ranges from INR1m to INR4m. Failure of an enterprise to notify CCI about the proposed combination can attract penalty, which can extend up to 1% of the total turnover or the assets of the combination, whichever is higher.

I.4.2 Consumer Protection Act

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

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

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

I.5 Negotiable Instruments Act, 1881

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

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

Additionally, it provides a speedy mechanism in cases when cheques are dishonored and criminal and punitive punishment in such cases.

I.6 Sale of Goods Act, 1930

The Sale of Goods Act, 1930 (SG Act) is complementary to the Indian Contract Act, 1872 (ICA). The basic provisions of the ICA also apply to the contract of sale of goods. The basic requirements of a contract include offer and acceptance, legally enforceable agreement, mutual consent, parties competent to enter contracts, free consent, lawful object and considerations that apply to the contract of sale of goods.

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

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

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

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

If goods are sold and property transferred to the buyer and he or she refuses to pay for them, the only remedy available to the seller is to approach the court. The seller does not have the right to forcefully take possession of the goods from the buyer once the property of goods is transferred to him. However, some rights have been given to the buyer.

I.7 Arbitration and Conciliation Act, 1996

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

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

J

Mergers & Acquisitions

Did you know !

The largest employer in the world is the Indian Railways, employing over a million people

India is emerging as an active player in the world of mergers and acquisitions (M&As). M&As continue to be an important tool for inorganic growth, which is evident from the plethora of deals Indian companies have entered in the recent past.

J.1 Reorganization and mergers

Reorganization of a company through compromise (sacrifice by shareholders, creditors and others on their claims and entitlements to resurrect the company) or by an arrangement between the company and its shareholders or creditors requires the sanction of the jurisdictional High Court and approval of shareholders, creditors and other regulatory authorities. The power to approve reorganization and mergers has recently been shifted from the High Courts to the National Company Law Tribunal (NCLT). However, the NCLT is still in the process of being formed.

J.2 Acquisitions

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

J.3 Demergers

A demerger is a reorganization tool that is increasingly being used by companies to segregate their core and non-core businesses. As in the case of mergers, demergers are also a court-driven process, which require the sanction of jurisdictional High Courts/the NCLT, along with the approval of shareholders, creditors and other regulatory authorities.

J.4 Slump sale

A slump sale involves the transfer of an identified business activity from one entity to another for a lump sum consideration without assigning values to individual assets/liabilities. Unlike a demerger, a slump sale is not mandatorily a court-driven process and can be achieved through a simple shareholders' resolution and legal agreements.

J.5 Buy-back of shares

The Companies Act permits a company to buy back its share capital up to a ceiling of 10% of the paid-up equity capital and free reserves, provided this is sanctioned in the company's board meeting. A company is also likely to buy back up to 25% of its paid-up capital and free reserves, provided the buy-back is sanctioned by a special resolution of shareholders. No offer of buy back shall be made within a period of 12 months from the date of the preceding offer of buy–back, if any.

The Companies Act also prescribes certain conditions relating to reserves, as well as a bar on the company issuing further shares of the same class for a period of six months, and debt equity ratios, etc., for a company to be eligible to buy back shares. The procedure for affecting a buy-back is relatively simple and does not require a court process. Companies listed on a stock exchange in India are subject to the guidelines prescribed by SEBI in this regard. Private and unlisted public companies are governed by the "Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999" prescribed in this regard.

J.6 Capital reduction

Capital reduction is a court-regulated process whereby a company can pay off its shareholders by cancelling or reducing their capital or cancelling their share capital against accumulated losses.

Capital reduction requires the sanction of the jurisdictional High Court/ NCLT and other regulatory authorities. The process also requires the company to obtain the sanction of various parties whose interest is likely to be affected as a result of the capital reduction scheme.

J.7 A comparative study of mergers, demergers, slump sale and acquisition

Regulations/ provisions	Merger	Demerger	Slump sale	Acquisition
Companies Act	Section 391 – 394 procedure	Section 391 – 394 procedure	Section 293 approval (only in case of a public company)	Section 372 (for acquirer)
IT Act - Taxability				
Shareholders Shareholders Company	Tax neutral[1]	Tax neutral[1]	Not applicable	Taxable
Company	Tax neutral[1]	Tax neutral[1]	Taxable[3]	Not applicable
Carry forward of losses	Available[1]	Available[1]	Non Available	Available[6]
The Takeover Code (open offer)2	Specific exemption[9]	Specific exemption[9]	May be triggered[4]	May be triggered[7]
Exchange control regulations/Foreign Direct Investment guidelines	Intimation to RBI[5]	Intimation to RBI[5]	Guidelines for issue of shares to be followed[5]	Approval from RBI and FIPB[8]
Typical time frame	4-5 months	3-4 months	1-2 months	1-2 months

1 Subject to fulfilment of certain prescribed conditions
2 Only applicable to listed entities
3 Specific computational methodologies prescribed
4 If shares are issued as a consideration
5 Subject to sectoral caps
6 In the case of widely held companies – certain conditions need to be complied with in the case of closely held companies
7 If prescribed limits are exceeded
8 Subject to sectoral caps and declarations in prescribed form
9 In a scenario where the listed company is party to the "scheme"' In a scenario where listed company is not party to the "scheme", certain conditions need to be satisfied to avail the exemption.

K Individuals

Did you know !

By 2025, India is expected to become the world's fifth-largest consuming country. According to a report by the Boston Consulting Group and CII, India's consumer spending is likely to expand nearly four times to US$3.6 trillion by 2020.

K.1	**Visa and registration requirements**
K.1.1	Visa on arrival
K.1.2	Temporary Landing Facility/Permit (TLF/TLP)
K.1.3	Tourist visas
K.1.4	Business and employment visas and self employment
K.2	**Foreign exchange regulations**
K.3	**Residential permit**
K.3.1	Formalities to be observed by registered foreigners
K.4	**Family and personal considerations**
K.5	**Other matters**
K.5.1	Person of Indian Origin (PIO) Card
K.5.2	Dual citizenship

K.1 Visa and registration requirements

K.1.1 Visa on arrival

A visa-on-arrival (VoA) facility is available to the citizens of Finland, Japan, Luxembourg, New Zealand, Singapore, Cambodia, Indonesia, Vietnam, the Philippines, Laos and Myanmar. In general, foreign passengers should ensure that they are in possession of a valid Indian visa before they begin their journey to India. However, nationals of Bhutan and Nepal do not need a visa to enter India, and nationals of Maldives do not require a visa for entry into India for a period of up to 90 days. A separate visa regime exists for diplomatic and official passport holders.

K.1.2 Temporary landing facility/permit (TLF/TLP)

There is provision to grant a temporary landing facility (TLF)/ temporary landing permit (TLP) to allow the entry of foreigners arriving in emergent situations without an Indian visa, for instance, death or serious illness in the family, on payment of specified amount. This facility can also be extended to transiting foreigners who have acquired confirmed onward journey tickets within 72 hours. Apart from this, foreign tourists in groups of four or more arriving by air or sea, sponsored by recognized Indian travel agencies, with a pre-drawn-up itinerary can be granted a collective landing permit for a specified period of time. This needs a written request from a travel agency to the Immigration Officer, giving the complete personal and passport details of the group members and undertaking to conduct the group according to the itinerary, with an assurance that no individual will be allowed to drop out from the group at any place. The provisions of TLF/TLP are, however, not available for nationals of Sri Lanka, Bangladesh, Pakistan, Iran, Afghanistan, Somalia, Nigeria and Ethiopia.

K.1.3 Tourist visas

Visitors to India need visas to enter the country unless they are Indian citizens. Ten-year visas are only available for US citizens under a bilateral arrangement. Non-resident Indians, who are citizens of another country, are also required to obtain visas before arriving in

India unless they hold a person of Indian origin (PIO) card issued by the GoI. Visas should be obtained from the Indian embassy or consulate in the applicant's home country. Special permits are required to visit the Andaman and Nicobar Islands, Bhutan, Lakshadweep, remote North Eastern states and Sikkim.

Tourist visas are valid for one to six months, usually beginning on the date it was issued and not on the date of entry into India. Tourist visas are usually multiple-entry visas; however, this option should be specifically requested at the time of application. In respect of foreign nationals holding tourist visas with multiple entry facility, there should be a gap of at least two months between two visits to the country on such a Tourist visa. If any foreign national is required to visit the country again within a period of two months of his last departure, such foreign national should obtain special permission from the Indian embassy or consulate concerned. The Indian embassy or consulate may consider such requests on merits of each case.

K.1.4 Business and employment visas and self-employment visas

Business visas: Business visa will be granted to individuals visiting India for business purposes and not for full time employment. They are granted under specific conditions that include the assurance of financial standing of the applicant, as well as his or her competencies in the field of the business in question.

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

- Establishing a business venture
- Exploring the possibility of an industrial or business venture in India
- Purchase and sale of industrial, commercial or consumer products
- Attending technical meetings or discussions
- Attending board meetings and general meetings
- Recruitment of manpower
- Functioning as partners or directors in a business

- Consultation or participation with respect to exhibitions, trade fairs or business fairs
- Meeting with suppliers or potential suppliers to evaluate or monitor quality, negotiate supplies, place orders and provide specifications for goods procured from India
- Monitoring progress on ongoing projects
- Meeting with Indian customers on ongoing projects
- Meeting to provide high-level technical guidance on ongoing projects
- Activity before and after a sale that does not amount to the execution of a contract
- In-house training at the regional hubs of a foreign company
- Serving as a tour conductor or travel agent

Business visas with multiple entry facilities will be granted for a period up to five years or for a shorter duration according to the individual's requirements. Further, a business visa will be granted with the stipulation of a maximum stay of six months for each visit. If the length of the stay has not been stipulated, an endorsement requiring registration with the Foreigner Regional Registration Office (FRRO) within 14 days will be made on the visa.

India missions can grant a business visa with a validity of 10 years and a multiple-entry facility to US nationals.

Employment visas: Employment visa will be issued subject to the applicant being skilled and qualified and on the condition that the job for which the visa is being applied is neither routine, ordinary or secretarial in nature nor for which there are already a large number of qualified Indians. An employment visa will be granted to a foreign national if his or her salary exceeds US$25,000 per annum. The salary threshold of US$25,000 however, does not apply to ethnic cooks, language teachers (other than English teachers), translators and professionals working for the concerned Embassy or High Commission in India.

An employment visa can be issued to a foreign national visiting India for the purpose of carrying out the following activities:

- Execution of projects or contracts, regardless of duration
- Installation and commissioning of machinery with respect to a contract for supply
- Transfer of know-how for which an Indian company pays fees or royalties
- Consulting on a contract basis for an Indian company that pays fixed remuneration
- Taking up employment as a coach of a national- or state-level team or reputed sports club
- Performing as a foreign sportsperson for a specific period under contract with an Indian club or organization
- Providing engineering, medical, accounting, legal and other highly skilled services in the capacity of an independent consultant
- Serving as a foreign language teacher or interpreter
- Serving as a foreign specialist chef

A foreign technician/expert coming to India to pursue a bilateral agreement between the GoI and the foreign government, or to pursue a collaboration agreement that has been approved by the GoI, can be granted an "employment visa" for the duration of the agreement, for a period of five years, whichever is less, with multiple-entry facilities.

Highly skilled foreign individuals employed in the IT software and IT-enabled sectors will be granted "employment visas" with a validity of up to three years or the term of the assignment, whichever is less, with multiple-entry facilities. Foreign nationals employed in sectors other than IT software and IT-enabled services will be granted employment visas with a validity of up to two years or the term of the assignment, whichever is less, with multiple-entry facilities. In the case that an employment visa is issued for a period of more than 180 days, it is mandatory to register with the FRRO within 14 days of arrival. However, certain visas specify certain "specific endorsements" for which registration formalities are to be processed accordingly. In cities, which do not have an FRRO office, expatriates must register with the local police station.

Business visas and employment visas will be issued only from the country of origin or from the country of domicile of the individual provided the period of permanent residence of the individual in that country is more than two years.

Self-employment: Foreign nationals seeking to practice their professions or engage in an occupation, trade or business in India must register with the RBI.

Project visa: The GoI has introduced project visa for foreign nationals coming to India for "execution of projects in the power and steel sectors". The validity of the visa will initially be for the duration of the project/contract with a multiple-entry facility, but the duration cannot exceed one year.

Conference visa: A new category of visa — "Conference visa" — has been introduced, which will be granted to foreign nationals visiting India to attend a conference, if all the following conditions are met:

- The individual holds a valid passport and re entry permit according to the laws of their home country.
- The individual should not be a persona-non-grata or the subject of a negative list or warning circular or other restrictive lists.
- He should be a person of assured financial standing.

Conference visa will be issued for the duration of the conference and the travelling time.

Journalist visa: This is given to professional journalists and photographers. (If the professional intends to make a documentary in India, he or she may contact the Press and Information wing in the Embassy/Consulate General of India). Journalists are required to be accredited members of the Press Information Bureau and should be full-time personnel of a newspaper, magazine or journal.

Other visas issued in India include student visas, yoga visas, research visas and missionary visas, among others.

K.2 Foreign exchange regulations

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

A special rule applies to an expatriate worker (whether a foreign national or an Indian citizen) who is employed by a foreign company outside India who is deputed to the office, branch, subsidiary, joint venture in India of such foreign company. Such expatriate workers are likely to receive salary in the foreign bank account outside India, provided income tax is paid on the entire salary accrued in India. However, where an expatriate worker referred to above is deputed to work in India in an entity, which is not directly related to its foreign employer (as a directly related subsidiary, branch, liaison office, joint venture of its foreign employer), then a specific RBI approval for payment of salary outside India will be required.

India regulates the acquisition, holding, transferring, borrowing, or lending of foreign exchange and the acquisition of foreign security or immovable property located outside India by persons resident in India. However, a person resident in India is likely to hold, own, transfer or invest in foreign currency, foreign security or an immovable property located outside India if the person acquired, held or owned such currency, security, or property when he or she was resident outside India or such person inherited the currency, security or property from a person who was resident outside India.

The definition of residential status of individuals under the exchange control law differs from the definition under the Income Tax Act, 1961.

Under a liberalized remittance scheme for resident individuals, which has been notified, total remittances of up to US$200,000 for each financial year per individual are allowed for permissible current account and permissible capital account transactions, subject to certain exceptions. The scheme allows individuals to acquire and hold immovable property or shares, maintain foreign-currency accounts or other assets outside India without RBI approval, subject to the fulfilment of specified conditions.

K.3 Residential permit

All foreign nationals are required to register with police authorities at the local registration office within two weeks from their date of arrival if their visas are valid for more than six months (or if the visa stamps specifically require this registration). A foreign national holding a visa valid for six months or less, and wishes to stay back in India beyond the period of validity, must register within two weeks after 180 days from the time of his or her arrival in India. A PIO card holder, whose continuous stay in India exceeds 180 days, is required to register within 30 days after the 180 days from his or her arrival in the country.

The following documents need to be presented to register with the local registration office:

- Application form
- Photocopy of the passport and initial visa
- Four passport size photographs of the applicant
- Details of residence/proof of residential address in India
- Notarized documents submitted to the President of India by a guarantor willing to reimburse the GoI if the individual continues to reside in India or if he or she is being supported by the GoI
- Copy of the marriage certificate in the case of those seeking extension of stay on grounds of being married to an Indian national
- Accreditation certificate from the Press Information Bureau in the case of a visitor with a journalist visa-level appointees in public limited companies
- Two copies of the approval of the GoI in the case of a joint venture or collaboration
- Copy of permission from the RBI in the case of a business/joint venture
- Terms and conditions of appointments and copy of contract or agreements in the case of an employment visa
- Undertaking from the concerned Indian company (typically specifying the nature of work, etc.) in the case of employment/ business visa

- Copy of the passport of an individual signing the undertaking mentioned above (Please note that only an Indian passport holder can provide such an undertaking)
- Copy of the Certificate of Incorporation, Articles of Association and Memorandum of Association
- In the case of a student visa, bonafide certificate from school/ college
- In the case of a research visa, bonafide certificate and letter from the nodal agency/ministry sponsoring the research
- The original passport and visa also required at the time of filing for verification with the authorities
- Registration is valid for the term of the visa and can be extended upon application. Failure to register is likely to result in the immigration authority's refusal to allow the foreign national to leave the country.

K.3.1 Formalities to be observed by registered foreigners

A registered foreigner is issued a registration booklet containing his latest photograph, details of residence and other requirements. An endorsement is also made in the passport relating to registration. The foreigner is required to intimate any permanent change in his or her address to the registration authorities. The person is also required to inform the Registration Officer if he/she proposes to be absent from his/her registered address continuously for a period of eight weeks or more. Similarly, a foreigner, who stays for a period of more than six weeks at any place other than the district of his/her registered address, should inform the Registration Officer of that district of his/ her presence. Every foreigner is required to furnish to the Registration Officer of the district, in which his/her registered address is located, particulars relating to any circumstances affecting in any manner the accuracy of the particulars recorded in his/her certificate of registration within 14 days after the circumstance has occurred, and should provide to the Registration Officer all information as may be required to maintain the accuracy of the certificate.

Every foreigner who is about to depart finally from India should surrender his or her certificate of registration either to the Registration Officer of the place where he/she was registered, of the place from where he/she intends to depart or to the Immigration Officer at the port/check post of exit at the time of his/her final departure from India.

K.4 Family and personal considerations

Work visas for family members

Entry visas are issued to accompanying family members of individuals visiting India on business or for employment. Spouses or dependents of working expatriates must obtain separate work permits to be employed in India. According to guidelines issued, the visa of the spouse of an employee on an intra-company transfer may be converted from an "X" Visa (Entry visa) into an employment visa subject to specified conditions. Family members intending to reside with a working expatriate must register separately at the local registration office. Children of working expatriates must obtain student visas to attend Indian schools.

Driver's permit

Foreign nationals are not permitted to drive in India using their home country drivers' licenses. They should obtain international drivers' licenses in their home countries. Such licenses are normally valid for six months.

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

K.5 Other topics

K.5.1 PIO card

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

- The individual has held an Indian passport at any time.
- The individual or any of his or her parents, grandparents or great-grandparents were born in and are permanently resident in India.
- The individual's spouse is a citizen of India or a PIO (this implies that even a foreign spouse of a citizen of India or of a person of Indian origin can apply for a PIO card)
- PIO card holders are granted certain benefits including:
- A waiver of the requirement to obtain a visa to visit India
- Exemption from the requirement to register if the individual's stay in India does not exceed 180 days
- Acquisition, holding, transfer and disposal of immovable properties in India except acquisition of agriculture or plantation properties
- No requirement of student visa for undertaking studies in India; similarly employment visa will not be required to take up employment in India.
- Benefits under various housing schemes of the Life Insurance Corporation of India, state governments and other government agencies

K.5.2 Dual citizenship

A foreign national, who was eligible to become citizen of India on or after 26 January 1950 or belonged to territory that became part of India after 15 August 1947 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some or the other form under the local laws is eligible for registration as Overseas Citizen of India (OCI). However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible to be OCI.

L Direct Taxes

Did you know !

India's growth story is largely driven by self-consumption and therefore the relative impact of global economic slowdown is lesser as compared to other economies. In 2050, India is projected to record the lowest median age among the BRIC nations and developed countries, indicating favorable demographic dividends.

India has a well-developed tax structure and the authority to levy taxes is divided between the Central and state governments. The Central Government levies direct taxes including income tax, wealth tax, corporate tax and indirect taxes comprising customs duty, excise duty, central sales tax and service tax. The states are empowered to levy professional tax and state sales tax apart from various other local taxes, including entry tax and octroi.

L.1 Administration

Administration, supervision and control in the area of direct taxes lie with the Central Board of Direct Taxes (CBDT). The CBDT works under the MoF, exercises significant influence over the working of the country's direct tax laws and also ensures effective discharge of executive and administrative functions.

The Indian tax year extends from 1 April of a year to 31 March of the subsequent year. A corporation tax year also ends on the same date. All corporations (except those who are required to submit transfer pricing certificate in Form 3CEB in respect of international transactions) are required to file a return of income (ROI) by 30 September, even in the event of loss. However, corporations who are required to submit transfer pricing certificate in Form 3CEB in respect of international transactions are required to file an ROI by 30 November. Non-resident corporations must file an ROI in India if they earn income in India, or they have a physical presence/economic nexus in India.

Corporate tax liability needs to be estimated and discharged by way of advance tax in four instalments on 15 June, 15 September, 15 December and 15 March of every year.

Late filing of ROI and delay in payment/shortfall in taxes are liable to attract penal interest at prescribed rates. Interest is generally imposed on the balance of the unpaid tax due and on underpayment of the advance tax due.

L.2 Corporate income tax

For Indian income tax purposes, a corporation's income comprises:

- Income from house property
- Income from business
- Capital gains on disposition of capital assets
- Residual income arising from non-business activities

Corporations resident in India (whether owned by Indians or non-residents) are taxed on their worldwide income arising from all sources. Non-resident corporations are taxed on the income earned from a business connection in India or from other Indian sources. A corporation is deemed to be resident in India if it is incorporated in India or if its control and management is wholly situated in India.

If there is a tax treaty between India and the country of residence of the taxpayer, the provisions of the IT Act or the tax treaty, whichever is more beneficial, will apply. Accordingly, the taxability of a non-resident in India is likely to be restricted or modified and lower rates are expected to be applied. However, in order to be eligible for tax treaty benefits, a taxpayer will be required to obtain a valid Tax Residency Certificate (TRC) with prescribed particulars issued by revenue authorities of the country of residence of the taxpayer. In general, India's tax treaties provide that corporation residents of other countries are subject to Indian tax on business profits derived from a business in India, only if the non-resident has a permanent establishment in India.

L.2.1 Rates of corporate tax

Normal rate

Domestic corporations are subject to tax at a basic tax rate of 30%, as well as a 5% surcharge. Foreign corporations are subject to a basic tax rate of 40%, as well as a 2% surcharge. The surcharge is only applicable in cases where the total income of the taxpayer (domestic or foreign corporation) exceeds INR10m. Further, the tax payable by all companies is enhanced by an education cess at the rate of 3% on the tax payable, inclusive of surcharge. The effective tax rate for domestic corporations is 32.45% (including surcharge and education cess) and for foreign corporations 42.02% (including surcharge and education cess).

Nature of income	Tax rates (corresponding note)
Corporate income tax	
Domestic Corporation (h)	30 (a)
Foreign corporation	40 (a)
Dividend distribution tax	15 (a)
Long term capital gains tax	20 (a) (d) (e)
Withholding Tax	
Dividends	
Paid to domestic companies	0 (g)
Paid to foreign companies	0 (g)
Interest	
Paid to domestic companies	10 (a)
Paid to foreign companies	20 (a) (b)
Royalties from patents, know how etc	
Paid to domestic companies	10 (a)
Paid to foreign companies	10 (a) (f)
FTS	
Paid to domestic companies	10 (a)
Paid to foreign companies	10 (a) (f)
Net operating losses	
Carry back	0
Carry forward	8 years (c)

a. For the tax year ending 31 March 2013, the rates listed above for corporate income tax, including capital gains Tax and DDT, have to be increased by a surcharge of 5% of such taxes in the case of domestic corporations. In the case of foreign corporations and branches, income tax, capital gains tax and withholding taxes have to be increased by a surcharge of 2% of such taxes. The surcharge (except in the case of DDT) is only applicable in cases where the total income of the taxpayer (resident corporation or foreign corporation/branch) exceeds INR10m. In addition, the tax payable by corporations (except in the case of withholding taxes on payments to domestic persons and corporations) has to be increased by an education cess, which is imposed at the rate of 3% of the tax payable, inclusive of the surcharge.

b. This rate only applies to interest on foreign currency loans. Any other interest is subject to tax at the normal rates applicable to foreign corporations. However, any interest paid by an infrastructure debt fund to a non-resident or to a foreign company attracts a withholding tax of only 5% (plus applicable surcharge and cess). Further, any payment by way of interest made by an Indian company to a non-resident or a foreign corporation in respect of monies borrowed in foreign currency between 1July 2012 and 1 July 2015, under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the GoI, attracts a withholding tax of only 5% (plus applicable surcharge and cess).

c. Unabsorbed depreciation is likely to be carried forward indefinitely to offset taxable profits in subsequent years. Unabsorbed business loss can be carried forward to offset the profits of eight years succeeding the year when the loss occurred.

d. Capital gains arising from the sale of assets held for more than three years (one year in the case of certain assets such as shares, the unit of a mutual fund, etc.) are known as long-term capital gains. Capital gains other than such long-term gains are known as short-term capital gains, which are taxed at normal corporate rates.

e. Long-term capital gains arising from the transfer of equity shares or the units of an equity-oriented mutual fund on any recognized stock exchange in India are exempt from tax if STT has been paid on such transactions and short-term capital gains on such transactions are taxed at 15%. Long-term capital gains arising from transfer of unlisted securities by a non-resident investor or foreign corporation are taxed at 10% on the gains computed without giving benefit of currency fluctuations and indexation.

f. Subject rates apply in the case of royalty/FTS being received by a foreign company in pursuance of an agreement made on or after 1 June 2005.

g. Dividends paid by domestic corporations are exempt from tax in the hands of the recipients, if DDT is paid on the dividends paid.

h. Dividend received by a domestic corporation during the period 1 April 2011 to 31 March 2013 from a specified foreign company is taxable at the rate of 15% (plus surcharge and education cess). Specified foreign company is a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.

Special rates for non-resident corporations

Royalty or fees for technical services: Foreign corporations are taxed with respect to royalty or fees for technical services (FTS), which are received from the GoI, from Indian organizations under agreements that are approved by the GoI or which are in accordance with the country's industrial policy (refer to notes 1 and 2).

In pursuance of agreements made on or after 1 June 2005	Taxable at 10% on a gross basis (plus surcharge at 2% and education cess at 3%)

Notes:

i. Royalties and FTS which are effectively connected with the foreign corporation's permanent establishment in India, are taxed on a net income basis at the normal rates applicable to foreign corporations.

ii. Royalties and FTS, which are not received from the GoI or Indian organizations, are taxed on a net income basis at the normal rates applicable to foreign corporations. So are royalties and FTS payable under agreements that are not approved by the GoI or under arrangements that are not in accordance with India's industrial policy. These are taxed on a net basis at normal rates applicable to foreign corporations.

Dividend income: Dividend income distributed by domestic corporations (on which dividend distribution tax has been paid by the company distributing the dividend) is exempt from tax in the hands of the recipients.

Interest on foreign currency loans: Foreign corporations earning interest on foreign currency loans given to an Indian concern or to the GoI are taxed at the rate of 20% on the gross interest. Any payment by way of interest made by an Indian company to a non-resident or a foreign company in respect of monies borrowed in foreign currency between 1 July 2012 and 1 July 2015, under a loan agreement or by way of issue of long-term infrastructure bonds, as approved by the GoI, are taxed at the rate of 5% on gross interest.

Income earned by overseas financial organizations: Specified overseas financial organizations earning an income from units of specified mutual funds, purchased in foreign currency, are taxed at the rate of 10% on the gross amount of such income. Long-term capital gains arising from the transfer of such units are also taxed at the rate of 10%.

Income earned by FIIs: FIIs are taxed at the rate of 20% on income received with respect to securities, at the rate of 10% on long-term capital gains and the rate of 30% on short-term capital gains arising from the transfer of securities. However, if the transaction is liable to STT, an FII's long-term capital gains are exempt from tax and its short-term capital gain is liable to taxation at 15%.

The rates given above are likely to be subject to more beneficial provisions of the tax treaty between India and the country in which the taxpayer is resident. See Appendix 5 for a sample corporate tax calculation.

L.2.2 Determination of taxable income (corporate)

i. Income from house property

Income earned by renting out of house property is taxable in the hands of the owner. Valuation of income from house property is prescribed under various scenarios of occupancy ranging from rented, vacant to self-occupied. The owner is entitled to a deduction on account of municipal taxes actually paid.

Further, a standard deduction for repairs from such income at 30% of the prescribed value is permitted. Interest on borrowed capital, up to specified limits and on fulfilment of prescribed conditions, is also allowed as a deduction while computing the net income liable to tax.

ii. Income from business

Taxable profits are computed in accordance with common business or accounting principles, modified by statutory tax provisions.

Business deductions

Taxpayers can deduct all business-related expenses from their gross income. Personal expenses and capital expenditure, other than expenditure on scientific research and other specified expenses, are not deductible. Income tax, wealth tax, employees' personal tax on non- monetary perquisites borne by employer and expenditure incurred in relation to exempt income are also not deductible.

Inventories

Inventories should be valued in accordance with the accounting policy regularly complied with by the tax payer at cost or net realizable value (whichever is lower).

Provisions

In general, ad hoc provisions for expenses or losses are not tax-deductible. Provisions for duties, taxes bonuses, employer's contributions to social security funds, leave salary and interest on specified loans are deductible on an accrual basis, provided corresponding payments are discharged before the due date for filing the ROI. Otherwise, the deduction is allowed in the year of actual payment.

General provisions for doubtful debts are not deductible unless the bad debt is actually written off in the accounts. However, relief up to specified limits is available to banks and financial institutions with respect to provisions for non-performing assets.

Retirement payments

Payments made to employees under Voluntary Retirement Schemes are deductible over a period of five years commencing from the year in which the sum has been paid.

Contributions to retirement benefits and other similar welfare funds are deductible, provided the corresponding payments are discharged before due date for filing the ROI. Otherwise, deduction is allowed in the year of actual payment.

Depreciation and amortization allowances

Depreciation or amortization included in financial statements is not deductible. Except in the case of undertakings engaged in the generation or the generation and distribution of power, depreciation for tax purposes must be calculated on a block of assets according to the declining balance method at prescribed rates. Block of assets is a group of assets falling within a class of assets, comprising tangible and intangible assets, in respect of which specific tax depreciation rates are prescribed. Allowance for depreciation is only available after the asset is ready for use for its business purpose. In the event assets are acquired during the year and put to use for a period of less than 180 days, only half of the admissible depreciation is allowed during that year.

Depreciation is computed on the amount arrived at after adding to the declining balance value at the beginning of the year for a particular block of assets the actual cost of the assets acquired during the year, reduced by the sale proceeds arising from the disposition of any asset in that block.

Tax depreciation rates (declining balance method):

Assets	Percent (%)	Assets	Percent (%)
Plant and machinery	15*	Ships	20
Cars other than those that are hired out	15	Residential buildings	5
Computers (including software)	60	Buildings other than residential ones	10
Furniture and fittings, including electrical fittings	10	Intangible assets such as know-how, patents, copyrights trademarks, licenses, franchises or any other business or commercial right of similar nature	25
Buses, lorries and taxies that are hired out	30		

* In respect of plant and machinery (other than ships and aircraft) installed after 31 March 2005, additionally, accelerated depreciation equal to 20% of the actual cost is allowed in the year of acquisition to the taxpayer engaged in the business of manufacturing or producing any article or in the business of generation or generation and distribution of power

Corporations engaged in the generation of or the generation and distribution of power have the option of claiming depreciation on a written down value basis, but when this option is exercised once, it cannot be changed later.

Restrictions on interest deductions

India does not currently have mandatory thin capitalization rules. However, banks and financial corporations are required to comply with prescribed capital adequacy norms. Interest is allowed as a deduction, provided it is with respect to capital borrowed for the purpose of business.

Disallowance of payments to residents and non-residents To enforce tax-withholding provisions, certain payments on which tax has not been withheld or withheld taxes are not deposited according to the law are not allowed as a tax deduction. These are, however, allowed as deductions in the subsequent tax year in which the appropriate taxes withheld are deposited.

With effect from 1 April 2012, where taxes are not deducted by the payer but the resident payee declares the payments in the return of income and deposit taxes on the returned income, the payer is not regarded as in default, subject to fulfilment of certain prescribed conditions.

Foreign exchange losses

Foreign exchange fluctuations are considered while computing taxable income, provided they are on revenue account. Realized exchange fluctuations on a liability, with respect to assets acquired outside India, can be adjusted with their declining balance value. Other exchange fluctuations on capital account are neither taxable nor deductible.

Relief for losses

Business losses, other than unabsorbed depreciation, can be carried forward to be set off against taxable business income derived during the next eight years, provided the ROI for the year of loss is filed by the due date. However, closely held corporations are required to satisfy a 51% continuity of voting power test to carry forward business losses.

Unabsorbed depreciation can be carried forward indefinitely, to be set off against the taxable income of subsequent years.

iii. Capital gains and losses

Proceeds in excess of cost from the disposition of capital assets are generally taxed as capital gains. However, if such proceeds are not ascertainable or cannot be determined, then Fair Market Value of the said asset will be treated as proceeds from disposition of the capital asset. Capital assets include all kinds of property except stock-in-trade, raw material and consumables used in businesses or professions, personal effects (except jewelry), agricultural land and notified gold bonds.

Further, transfer of a capital asset, being any share or interest in a company incorporated outside India, deriving its value substantially from the assets located in India will be subject to capital gains in India.

General provisions

Long-term capital gains: Profits earned from the transfer of long-term capital assets are referred to as long-term capital gains. Generally, assets that have been held for more than three years are treated as long-term capital assets for the purpose of capital gains. However, the following assets are treated as long-term capital assets if held for more than one year:

- Shares (both listed and unlisted) or any other listed security
- Units of Unit Trust of India (UTI)
- Units of specified mutual funds
- Specified zero coupon bonds

In general, long-term capital gains are taxed at a basic rate of 20%. The cost of a capital asset is adjusted for inflation (indexation) to arrive at the indexed cost, which is allowed as a deduction while computing such long-term capital gains. Long-term capital gains arising from transfer of unlisted securities by a non- resident investor are taxed at 10% on the gains computed without giving benefit of currency fluctuations and indexation.

Gains derived from the transfer of UTI units, specified mutual fund units, listed securities or zero coupon bonds could be taxed at the rate of 10% (plus applicable surcharge and education cess), without allowing indexation adjustments, or at the rate of 20% (plus applicable surcharge and education cess) with the benefits of indexation, at the option of the taxpayer.

Long-term capital gains arising on the transfer of equity shares or the units of an equity-oriented fund (> 65% equity) on any recognized stock exchange in India is exempt from tax if STT has been paid on the transaction.

For assets acquired on or before 1 April 1981, the fair market value, as of 1 April 1981, or the actual cost of acquisition at the option of the taxpayer, will be treated as the cost of the asset. To compute capital gains arising from the transfer of bonus shares acquired after 1 April 1981, its cost is considered to be nil.

Long-term capital losses are allowed to be carried forward for eight consecutive years (subject to ROI filed on or before the due date), but may only be offset against taxable long-term capital gains.

Long-term capital gains are exempted from tax if an investment has been made as prescribed by the law in certain specified modes, including investment in residential property and specified bonds of institutions.

Short-term capital gains: Capital gains arising from the transfer of short-term capital assets (assets that do not qualify as long-term capital assets) are referred to as short-term capital gains and are taxed at the normal corporate income tax rates.

Short-term capital gains arising on the transfer of equity shares, the units of an equity-oriented fund on any recognized stock exchange in India, on which STT has been paid, are taxed at a lower rate of 15% (plus applicable surcharge and education cess).

Short-term capital losses are allowed to be carried forward for eight consecutive years (subject to filing of ROI on or before the due date) and may only be offset against taxable capital gains (both long term and short term).

Capital gains on depreciable assets: To compute capital gains arising from the sale of assets on which depreciation has been allowed, the sale proceeds of the assets are deducted from the declining balance value of the block of assets (including additions made during the year) of which the former form a part. If the sales proceeds exceed the declining balance value of the entire block, the excess is treated as short-term capital gain. Otherwise, there is no capital gain from the sale of such assets, even if the sales proceeds from a particular asset are greater than the cost of such an asset. If all the assets that form a part of a block are sold, the excess/deficit of the declining balance (including additions made during the year) over the sale proceeds is treated as a short-term capital gain/capital loss.

Special provisions relating to capital gains

Domestic tax law has a special provision for the taxation of capital gains earned by non-residents by the transfer of the shares and debentures of an Indian corporation acquired by utilizing foreign currency. Any gain (short or long term) is first computed in foreign currency utilized for investing in shares or debentures and then converted into Indian rupees at the exchange rate prevailing on the date of the transfer, to calculate taxable capital gains.

This special provision is a measure that is aimed at mitigating the effect of any fluctuation in the exchange rates of foreign currency on the capital gains earned by non-residents. No indexation benefits are offered in the calculation of capital gains in such cases.

Amalgamations, demergers and slump sales

Amalgamations: Amalgamations are tax-neutral, subject to the satisfaction of prescribed conditions. In the case of non-compliance with any of the prescribed conditions, any brought forward business loss and unabsorbed depreciation, which has been set off by the amalgamated corporation, is treated as its income for the year in which it failed to fulfil any of the prescribed conditions.

Demergers: The demerger of businesses by existing corporations is tax-neutral, subject to the fulfilment of prescribed conditions. The accumulated losses and depreciation of the demerged corporation, attributable to the resulting corporation, can be carried forward and set off by the latter, subject to its compliance with prescribed conditions.

Slump sale: Profits derived from a slump sale are taxed as long-term capital gains if the transferred undertaking has been held for more than 36 months. Taxable capital gain arising from a slump sale is the excess of the consideration received over the net worth of the undertaking. The net worth is the difference between the value of the undertaking's total assets (the sum of the tax-depreciated value of assets that are depreciable for income tax purposes and the book value of the other assets) and the book value of its liabilities.

iv. Income from other sources

Income that does not specifically fall under any of the types above is liable to tax as "income from other sources," including investment income and winnings from lotteries.

Where a closely held company receives from a resident, consideration for issue of shares, which exceeds the fair market value of such shares, such excess can be considered as income of the recipient. Fair market value of shares is higher of value as per prescribed method or value-based on value of assets as may be substantiated by company to the satisfaction of Revenue Authorities. However, receipt of such amounts by SEBI registered Venture Capital Fund/Venture Capital Company and other notified class of persons will not be considered as income.

Where a closely held company receives from any person (resident or non resident) shares of another closely held company either without consideration or for consideration less than fair market value, the difference in value is considered as income of recipient corporation. Fair market value of share is required to be determined according to prescribed method. However, receipt of shares in a scheme of amalgamation or demerger is excluded.

Investment income

Dividends are taxed in the following manner:

- Domestic corporations are required to pay Dividend Distribution Tax (DDT) on profits distributed as dividends at the rate of 16.2%, including the applicable surcharge at the rate of 5% and education cess at the rate of 3% with effect from 1 April 2011.
- The amounts declared, distributed or paid as dividends by Indian corporations are not taxable in the hands of the shareholders.

The dividends paid by foreign corporations are subject to tax in the hands of the shareholders. Dividend received by a domestic corporation during the period 1 April 2011 to 31 March 2013, from a specified foreign company is taxable at the rate of 15% (plus surcharge and education cess). A specified foreign company is a foreign company in which an Indian company holds 26% or more in nominal value of the equity share capital of the company.

L.3 Other direct taxes (corporate)

L.3.1 Minimum Alternate Tax (MAT)

Indian tax law requires MAT to be paid by corporations on the basis of profits disclosed in their financial statements. In cases where the tax payable according to regular tax provisions is less than 18.5% of their book profits, corporations must pay 18.5% (plus surcharge and cess as applicable) of their book profits as tax. For domestic corporations, the effective tax rate works out to a little more than 20%. Book profits (for this purpose) are computed by making the prescribed adjustments to the net profit disclosed by corporations in their financial statements.

The tax credit (i.e., difference between tax paid under MAT provisions and the amount payable under normal provisions of the IT Act) is likely to be carried forward for 10 years and set off against income tax payable under the normal provisions of the IT Act. A report from a Chartered Accountant, certifying the quantum of book profits, must be filed along with the ROI.

L.3.2 Alternate Minimum Tax (AMT)

Indian Income Tax Law requires AMT to be paid by any person (other than corporations) who claims specified deductions. In case where tax payable as per regular tax provisions is less than 18.5% of adjusted total income then such person is required to pay AMT on such total income at the rate of 18.5%(plus applicable cess). Adjusted total income for computation of AMT shall be the total income before giving effect to aforesaid specified deductions. Threshold of INR 2 m provided for specified tax payers up to, which AMT is not to apply. The tax credit, carry forward and set off provisions are similar to provisions under MAT.

L.3.3 Dividend Distribution Tax (DDT)

Dividends paid by domestic corporations are exempt from tax in the hands of the recipients. However, domestic corporations must pay DDT at the rate of 16.2% (including a 5% surcharge and a 3% education cess) on dividends declared, distributed or paid by them. Such tax is a non-deductible expense. Further, credit for dividend so received by a company is available for computation of dividend on which dividend distribution tax is to be paid by the recipient domestic corporation (where it further declares dividend) provided:

- The dividend is received from its subsidiary
- The subsidiary has paid dividend distribution tax payable on such dividend

Under the said provisions, a company is deemed to be a subsidiary of another company where the other company, holds more than half in nominal value of the equity share capital of the company.

L.3.4 Wealth tax

In India, wealth tax is payable at the rate of 1% if the taxable value of a corporation's net wealth exceeds INR3m. Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewelry, bullion, precious metals, any amount of cash not recorded in books of account and commercial property not used as business, office or factory premises. However, a residential house or houses owned by an employer and provided to an employee earning less than INR1,000,000 a year are exempt from tax. Assets such as a house for commercial purposes or a residential property are exempt from tax if they are owned as stock-in-trade, Residential house used for hire for 300 or more days in a year is also exempt. Productive assets such as shares, debentures and bank deposits etc. are not subject to wealth tax. A deduction is allowed for debts owed that have been incurred in relation to taxable assets. Tax is levied on net wealth, as of 31 March of the financial year.

L.4 Industry-specific tax schemes

An optional tonnage tax scheme was introduced for the Indian shipping industry from 1 April 2004, which taxes income on a deemed profit basis. Oil and insurance corporations have a separate code of taxation. Foreign shipping and air transport companies also have deemed profit basis of taxation.

L.5 Foreign tax relief

Tax treaties entered by India with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations can claim a foreign tax credit for the tax paid by them in other countries. The credit amount granted to such corporations is the lower of — the tax payable in India on income that is subject to double taxation or the foreign tax paid.

For a list of indicative tax rates prescribed under the various treaties, see Appendix 6.

L.6 Appeal mechanism

L.6.1 Conventional route

The following is the conventional appellate route that a taxpayer can adopt:

- Appeal to Commissioner of Income Tax (Appeals)

  An aggrieved taxpayer can file an appeal within the prescribed time, i.e., 30 days, and on payment of the prescribed fees, with the Commissioner of Income Tax (Appeals) (CIT-A) against any appealable order passed in his/her tax assessment by a lower authority.

- Appeal to Income Tax Appellate Tribunal (ITAT)

  If a taxpayer or the revenue department feels aggrieved about an order passed by the CIT-A, an appeal, can be preferred by the aggrieved taxpayer within the prescribed time, i.e., within 60 days, and on payment of the prescribed fees, with the ITAT on any question of fact or law or both. ITAT is the final fact-finding authority.

- Appeal to the High Court (HC)

  The IT Act provides for appeals to the HC from every order of the ITAT wherever the taxpayer/revenue department feels aggrieved, provided the appeal involves a substantial question of law. The appeal needs to be filed within the time limit allowed under the IT Act, i.e., 120 days, along with the payment of the necessary fees.

- Appeal to the Supreme Court (SC)

  This is the final appellate authority under the IT Act. Where either the taxpayer or the revenue department is aggrieved by the order of the HC, an appeal can be preferred to the SC. The time limit and fee payment rule applies to this appeal as well.

L.6.2 Dispute Resolution Panel (DRP)

In recognition of the fact that the tax dispute resolution mechanism currently in place is time consuming and finality is attained only after protracted litigation, an Alternate Dispute Resolution (ADR) mechanism has been introduced. The ADR mechanism is expected to resolve transfer pricing disputes for all categories of taxpayers, as well as disputes relating to the taxation of foreign companies in general (eligible taxpayers), on a fast-track basis. A DRP has been established for this purpose with the notification of the DRP rules. The DRP rules provide for establishment of the DRP at eight different locations in India and prescribe the procedure to be followed by the eligible taxpayers while seeking intervention of DRP in income-tax assessments.

Key features of the ADR mechanism through the constitution of the DRP are as follows:

- The Tax Authority is required to forward a copy of a draft assessment order to the eligible taxpayer if the former proposes a variation to the income or loss, which is prejudicial to the eligible taxpayer.
- The eligible taxpayer who objects to the draft assessment order has to file its objections with the DRP in a prescribed form, accompanied by certain other documents relating to the income tax assessment within 30 days of the receipt of the draft assessment order. The objections need to be specific and must, on each issue, indicate areas of disagreement with the Tax Authority.
- After hearing the objections, the DRP will issue within a maximum period of nine months from the end of the month in which the

draft assessment order was forwarded to the eligible taxpayer, appropriate directions to the Tax Authority for completion of the income tax assessment.

- The directions of the DRP are binding on the Tax Authority. Both, the tax authority and the eligible taxpayer can file an appeal directly with the ITAT, against an order passed in pursuance of the directions of the DRP.
- Each DRP consists of a collegium of three "commissioner" level officials nominated by the CBDT, the highest tax administration body in India.
- The ADR mechanism through the constitution of the DRP is expected to facilitate an expeditious resolution of transfer pricing and international tax disputes. It is expected that the DRP will help in resolving transfer pricing and international tax controversies, reducing taxpayer grievance and litigation, on a basis, which is fair and impartial to both the tax administration and the taxpayer and in a manner that will enhance public confidence in the integrity and efficiency of the DRP.

L.6.3. Authority for advance ruling (AAR)

- A scheme of advance rulings is available under the IT Act to determine tax liability. Under the scheme, the power to issue advance rulings, which are binding on the tax authorities as well as the applicant, has been entrusted to an independent adjudicatory body.
- Advance ruling relates to the written opinion by an authority, which is empowered to render it with regard to the tax consequences of a transaction or proposed transaction.
- The question raised in the application should not be already pending before any income-tax authority or ITAT or involve determination of fair market value of any property or relate to a transaction, which is prima-facie designed for avoidance of income-tax.

A ruling can be obtained by an applicant (who may be either a non-resident or a resident who has entered a transaction with a non-resident) with respect to any question of law or fact in relation to the tax liability of the non-resident, arising out of a transaction undertaken or proposed to be undertaken.

The IT Act provides for appeals to the HC in case the taxpayer/revenue department feels aggrieved by the ruling of the AAR.

L.7 Income tax (individuals)

L.7.1 Liability for income tax

Liability for income tax is governed by the residential status of individuals during the tax year.

Individuals are considered to be residents if they meet either of the following criteria:

- They were present in India for 182 days or more during the tax year, which extends from 1 April to 31 March.
- They were present in India for 60 days or more during the tax year and for at least 365 days in total during the preceding four tax years (The period of 60 days can be extended to 182 days in certain cases).

Individuals who do not meet either of the criteria mentioned above are considered to be non-residents. Individuals are considered to be "not ordinarily resident" if, in addition to meeting one of the criteria mentioned above, they satisfy either of the following conditions:

- Non-resident in India for 9 of the preceding 10 tax years
- Present in India for 729 days or less during the previous 7 tax years.

All individuals are subject to tax, unless they are exempt under the Income Tax Act or applicable tax treaties.

Income liable to be taxed in India depends on the residential status of the taxpayer. Categories of income liable to be taxed, according to residential status, have been depicted in the table below:

Residential status	Taxability
Resident and ordinary resident	▸ Worldwide income
Resident and not ordinarily resident	▸ Income received in India or deemed to be received in India ▸ Income accruing or arising in India or deemed to accrue or arise in India ▸ Income accruing or arising outside India, either from a business controlled from India or a professional set-up in India
Non-resident	▸ Income received in India or deemed to be received in India ▸ Income accruing or arising in India or deemed to accrue or arise in India

L.7.2 Types of incomes subject to tax in India

In general, all income received or accrued in India is subject to tax. Taxation of various types of income is detailed below. See the table in Appendix 7.1, which indicates individual income tax calculation and Appendix 7.2, which depicts the taxability of income items.

i. Employment income

All salary income related to services rendered in India is deemed to accrue or arise in India, regardless of where it is received or the residential status of the recipient.

Employees of foreign enterprises, who are citizens of foreign jurisdictions, are not subject to tax if all of the following conditions are satisfied:

- The foreign enterprise is not engaged in trade or business in India.
- The employee does not stay in India for an aggregate period of more than 90 days in the tax year.
- The compensation paid is not liable to be deducted from the income of the foreign employer in India.

Similar exemptions are available under tax treaties if an individual's stay is less than 183 days, but conditions vary. Non-resident foreign citizens employed on foreign ships, who do not stay in India for longer than 90 days in a tax year, are also exempt from tax on their earnings.

In general, most elements of compensation are taxable in India. However, certain benefits (listed below) are likely to receive preferential tax treatment, subject to certain requirements.

Corporation housing: The benefits of corporation housing (owned by the employer) is generally taxed at 15% of an individual's salary (10% of salary in cities with a population of less than 2,500,000 and 7.5% of salary in cities with a population of less than 1,000,000, according to the 2001 census. In the event accommodation is taken on lease by the employer, the employee is taxed at either 15% of his or her salary or the actual lease rental paid by the employer, whichever is lower. However, where any rent for the accommodation is recovered from the employee, the perquisite value is reduced by this amount. Furniture and appliances provided by the employer are taxed at the rate of 10% of their cost if the employer owns the items or the rent paid if the employer hires these.

Further where accommodation is provided at place of relocation in addition to existing accommodation, perquisite value of any one accommodation, which has lower value for a period up to 90 days is included in employment income and thereafter perquisite value of both accommodations are included in employment income.

Hotel accommodation: If an employee is provided with hotel accommodation, tax is imposed on either the hotel charges paid by the employer or 24% of the employee's salary, whichever is lower, reduced by the amount recovered from the employee, unless such accommodation is provided free of cost to the individual for up to 15 days on relocation. Such accommodation, provided for 15 days in aggregate, is exempt from tax.

Superannuation fund: Contributions made by an employer (in excess of INR0.1m) to a superannuation fund are taxable in the hands of the employee.

Interest-free or low-interest loans: The benefit of interest-free loans or low-interest loans exceeding INR20, 000 to an employee or a member of an employee's household is taxable, based on the purpose of availing the loan. The rate of interest is the one notified by the State Bank of India for similar loans.

Employer-paid taxes on non-monetary benefits: In general, the tax paid by an employer on behalf of an employee is grossed and taxed in the hands of the employee. However, any tax paid by an employer, on behalf of the employee, on non-monetary benefits is exempt in the hands of the employee.

The following employer-paid items are not included in an employee's taxable compensation or included in his or her taxable income at a value lower than the actual cost incurred by employer (to the extent that they do not exceed specified limits and satisfy the prescribed conditions):

- Reimbursable medical expenses
- Contributions to retirement benefit funds, including provident and gratuity funds, in India
- Certain allowances, including house rent and leave travel
- Travel and living allowance while on tour or transfer from normal place of duty

There is tax exemption of up to INR100 per month per child for up to two children on an education allowance provided by the employer to an employee for meeting the cost of his or her children's education. An allowance granted to an employee to meet the hostel expenses (boarding expenses in residential schools and colleges) of his or her children is exempt up to INR300 per month per child for up to two children.

Value of specified perquisites provided by employer like free or concessional use of motor car, gas, electricity water, food and beverages, club facility, movable assets etc. are included in employment income subject to certain exceptions. Reimbursement of telephone expenses including a mobile phone is not considered as perquisite

ii. Taxation of employer-provided stock options (ESOPs)

ESOPs allotted/transferred by an employer, free of cost or at a concessional rate, are taxable in the hands of the employee. ESOPs are taxed at the fair market rate on the date they are exercised by an employee, reduced by the amount actually paid by or recovered from the employee.

iii. Income from house property

According to the provisions of the IT Act, taxability of income from house property in the case of corporations and individuals is the same. For taxability of income from house property, kindly refer to Para L.2.2.i.

iv. Self-employment and business income

All self-employed individuals or those doing business in India are subject to tax. The general principles of taxation in respect of business income in the case of individuals are similar to those of a corporation as discussed in Para L.2.2.ii.

Deemed basis of taxation

With the objective of increasing compliance with taxation provisions for small businesses, and reducing the administrative burden on the tax machinery, the GoI has introduced a presumptive taxation scheme, which is applicable to individuals, any Hindu undivided family (HUF) and partnership firms (excluding LLPs) for all businesses (except the business of plying, hiring or leasing goods and carriages, persons engaged in specified professions or carrying out agency business or earning income in the nature of commission or brokerage) with a turnover of INR10m or less. Under the scheme, the taxpayer has the option to declare total income on a deemed basis at 8% of the gross receipts.

v. Capital gains on assets

The provisions in respect of taxability of capital gains in the case of individuals are similar to those in respect of corporations as discussed in Para L.2.2.iii.

However, the following provisions are applicable only in respect of individuals and HUF:

- Long-term capital gains are exempt from tax in certain cases if such gains are reinvested within six months in certain specified bonds. This exemption can be claimed for investments up to INR5m. If, within three years of such reinvestment, the specified bonds are sold or, in certain cases, used as security for a loan or an advance, the capital gains derived from the sale of original assets are subject to tax in the year the specified bonds are sold or used as security.
- Exemptions are available for long-term gains derived from the sale of a residential house and other capital assets if such gains are used to acquire a residential house within the prescribed time.
- Further, capital gains arising from the transfer of land is exempt if such land has been used by a tax payer or a tax payer’s parents for agricultural purposes for at least two years immediately preceding the date of transfer, and if the taxpayer uses the gains to purchase other land for agricultural purposes within two years from the date of the transfer. If gains from the sale of agricultural land are not reinvested, they are taxed as short-term gains if this land is held for less than three years, and as long-term gains if it is held for more than three years.
- Long-term capital gain on sale of residential property by an individual or HUF will be exempt if the net sale consideration is used for subscription to equity shares of a manufacturing small and medium enterprises (SME) and such SMEs utilizes the proceeds out of issue of equity shares for purchase of new plant and machinery within one year from the date of subscription, subject to fulfillment of other prescribed conditions. Capital gains will be subject to tax if shares of SME or the plant and machinery are transferred by such SME within a period of five years from the date of its acquisition.

vi. Income from other sources (investments, lotteries)

The general principles of taxation in respect of income from other sources in the case of individuals are similar to those of a corporation as discussed in Para L.2.2.iv. However, certain transactions are taxable only in the case of individuals or HUFs. These are discussed below.

NRIs (including persons of Indian origin) can exercise an option to be taxed at a flat rate of 20% on their gross investment income and a flat rate of 10% on their long-term capital gains on certain specified assets (without any deductions) arising from their foreign currency assets, acquired in India through remittances in convertible foreign exchange.

Interest payable on savings banks or fixed deposits in India is taxable and taxes are withheld at source by the banks if the interest exceeds INR10,000 in the tax year. The interest payable by scheduled banks (on approved foreign currency deposits) to non-residents, and not ordinary residents, is exempt from tax.

Taxability of certain transactions

- Any sum of money received (in excess of INR 50, 000) without consideration is taxable in the hands of the recipient.
- Where immovable property or any other property is received without consideration and the stamp/fair value of such property exceeds INR50, 000, the stamp/fair value of such property is taxable as income from other sources.
- Where immovable property or any other property is received for a consideration and such consideration is less than the fair value of the property by an amount exceeding INR 50,000, the fair value reduced by the consideration received is taxable as income from other sources.
- The provisions given above are not applicable where the sum of money or property is received from a relative on the occasion of the individual's marriage, under a will or inheritance, in contemplation of the death of the payer or donor or from a local authority, approved fund or trust.

L.7.3 Deductions

For individuals, a deduction of up to INR100, 000 can be claimed from their gross total income for prescribed contributions to savings instruments and pension funds. Further, deduction can be claimed from gross total income for payment of tuition fees for the education of specified family members. In addition, interest paid on loans obtained to pursue higher education (senior secondary education or above) is fully deductible. However, no deduction is available for repayment of the principal amount.

A deduction of INR10,000 will be available to individuals and HUFs in respect of interest on deposits (not being time deposits) in a savings account with a banking company, specified co-operative society or post office.

Health insurance premiums for recognized policies in India paid for insurance of the health of an individual or his/her family can be deducted, up to a maximum of INR15,000 (INR20,000 if insured person is more than 60 years) from their gross total income. Additional deduction up to a maximum of INR15,000 (INR 20,000 if insured person is more than 60 years) is available for insurance on health of parents of the individual. Payment made for preventive health check up for up to INR 5,000 will also be eligible for deduction within the limit mentioned above.

L.7.4 Income tax rates (individuals)

The following tax rates have been proposed that will apply to resident and non-resident individual tax payers for the year ending 31 March 2013.

Income slabs (INR)	Income tax
0–200,000*	Nil
200,001–500,000	10% of income in excess of INR200,000
500,001–1000,000	INR30,000 plus 20% of income in excess of INR500,000
1000,001 upwards	INR130,000 plus 30% of income in excess of INR1000,000

*Resident individuals with income of up to INR200,000 do not need to pay income tax and education cess. The exemption limit is INR250,000 for resident individuals above 60 years and below 80 years of age. In case of very senior citizens (defined as individuals above the age of 80 years), the exemption limit is INR500,000.

The tax calculated at the above mentioned rates is further increased by education cess at 3% for individuals.

For a sample tax calculation, see Appendix 7.3.

L.8 Income tax filing and payment process

All income is taxed on basis of the financial year from 1 April to 31 March. All taxpayers, including non-residents, must file ROI if their income exceeds the maximum amount that is not liable to taxation. Further, every resident (excluding not ordinary resident) owning any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India is required to furnish a return of income even if his/her income does not exceed the maximum amount that is not liable to taxation.

Recently the GoI has, by way of a notification, exempted certain classes of persons from the requirement of filing a return of income, subject to certain conditions. Broadly these are individuals whose total income for the relevant year does not exceed INR0.5m and consists of only income under the head salaries and other sources and in whose case whole of the tax liability is discharged by way of withholding by employer.

ROI for salary income need to be filed by 31 July, ROI for self-employment or business income must also be filed by 31 July, or, if accounts are subject to a tax audit, by 30 September every year. Wealth tax returns for individuals need to be filed by the same deadline applicable to them as in the case of income tax returns.

India does not have the concept of joint filing. As such, married couples are taxed separately. The passive income of minor children is aggregated with that of the parent with the higher income.

Taxpayers with income earned from employment pay tax through tax withheld by employer from their monthly salaries each pay period. Taxpayers with tax liability exceeding INR10, 000 need to make advance tax payments, after deducting credit for tax withheld, in three instalments on 15 September, 15 December and 15 March every year. However, a resident senior citizen not having income from business or profession is not liable to pay advance tax.

Non-residents are subject to the same filing requirements as residents. However, non-residents and NRI nationals (including persons of Indian origin), who only have investment income or long-term capital gains (on foreign exchange assets), need not file ROI if the required tax is withheld at source. Non-residents are subject to the same assessment procedures as residents.

Before leaving India, any individual who is not domiciled in the country is required to furnish an undertaking to the prescribed authority and obtain a no objection certificate (NOC) if the person has been in India to engage in business, professional or employment activities and has derived income from the said activities. Such undertakings must be obtained from the individual's employer or the payer of the income, and these undertakings must state that the employer or the payer of income will pay the tax payable by the individual. An exemption to obtain an NOC is granted to foreign tourists or individuals visiting India for purposes other than business or employment, regardless of the number of days spent by them in the country. At the time Indian nationals domiciled in India depart from the country; they need to provide their Permanent Account Number (PAN), the purpose of their visit and the estimated period of their stay outside India to the prescribed authority. However, a person domiciled in India can also be required to obtain an NOC in certain specified circumstances.

L.9 Other direct taxes (individuals)

L.9.1 Wealth tax

In India, wealth tax is payable at the rate of 1% if the taxable value of an individual's net wealth exceeds INR3 m. Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewelry, bullion, precious metals, cash in excess of INR50, 000 and commercial property not used as business, office or factory premises. The assets mentioned above, other than urban land, are exempt from tax if they are owned as stock-in-trade or used for hire. Additionally, one house or part of house (whether residential or commercial) or a plot of land not exceeding 500 sq. mtrs is also exempt. Productive assets, including shares, debentures and bank deposits, are not subject to wealth tax. A deduction is allowed for debts owed that have been incurred with relation to taxable assets. Tax is levied on net wealth, as of 31 March, preceding the year of assessment.

L.9.2 Social security

Social security in India is governed by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The EPF Act contains the following two principal schemes:

- Employees' Provident Funds Scheme, 1952
- Employees' Pension Scheme, 1995

Coverage

The Ministry of Labour and Employment has issued notifications extending the applicability of the Provident Fund and Pension Scheme rules to a new class of employees called "International Workers." Under the EPF Act, the following employees are considered to be "International Workers":

- An Indian employee (an Indian passport holder) who has worked or is going to work in a foreign country with which India has entered a social security agreement and who is or will be eligible to avail of the benefits under a social security program of that country, in accordance with such agreement

- A foreign national who works for an establishment in India to which the EPF Act applies

The EPF Act applies to the following establishments:

- An establishment employing 20 or more persons engaged in a specified industry or an establishment or class of establishments notified by the GoI
- An establishment employing less than 20 persons that voluntarily opts to be covered by the EPF Act

Covered employers must make a contribution toward the Provident and Pension Fund for their employees who are international workers.

An "excluded employee" is not covered by the EPF Act. An employee is considered to be an "excluded employee" if the following conditions are satisfied:

- The employee is an international worker who is contributing to a social security program of his or her country of origin, either as citizen or resident.
- The employee's home country has entered either:
  - A social security agreement with India on a reciprocity basis and the employee is considered to be a detached worker under the social security agreement
  - A bilateral comprehensive economic agreement with India containing a clause on social security prior to 1 October 2008, which specifically exempts natural personals of either country to contribute to the social security fund of the host country.

India has entered social security agreements with Belgium, Germany, Switzerland, Luxembourg, France, the Netherlands, Denmark, Hungary, Czech Republic, South Korea, Norway and Finland. Out of the above, the agreements with Hungary, Czech Republic, Norway and Finland have not yet been brought into force.

Contribution

Every covered employer is required to contribute 24% (12% each for the employer's and the employee's share) of the employee's "monthly pay" (as defined) toward the Provident Fund and Pension Fund. The employer has the option to recover the employee's share from the employee.

Out of the employer's 12% share of the contribution:

- In respect of international workers — 8.33% of monthly pay is allocated to the Employees Pension Fund.
- In respect of local employee — 8.33% of INR6,500 per month is allocated to the Employees Pension Fund.

The balance of the contributions is deposited in the Employees Provident Fund.

Local employees drawing a monthly salary of INR6,500 or more are excluded from the legislation, but this exclusion does not apply to International Workers. Consequently contributions are required for International Workers even if the monthly pay of the employee exceeds INR6,500.

Refunds of Provident Fund contributions are possible, subject to the satisfaction of certain conditions.

The employer contributions are exempt from tax up to 12% of monthly pay.

Withdrawal

An international worker can withdraw from Provident Fund only in the following cases –

- On retirement or on reaching the age of 58 years, whichever is later
- On account of permanent and total incapacitation.

However, in respect of members covered under a Social Security Agreement (SSA), withdrawal may be made on such terms as may be specified in such SSA.

L.10 General Anti Avoidance Rules (GAAR)

GAAR has been introduced in the IT Act to address aggressive tax planning and codify the doctrine of "substance over form".

Under GAAR provisions, where certain conditions are fulfilled, an agreement may be declared an "impermissible avoidance agreement";

a.

Once an agreement is declared to be an impermissible avoidance agreement, then the consequences in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, is determined keeping in view the circumstances of the case.

It has been clarified vide Finance Act, 2012 that onus of proof will be on revenue authorities for any action to be initiated under GAAR. Further, GAAR is proposed to be implemented with effect from 1 April 2013. However, recently an expert committee on GAAR as constituted by the Prime Minister of India has suggested deferring GAAR by 3 years on administrative grounds and be made applicable from tax year 2016-17.

L.11 Direct Taxes Code Bill, 2010 (DTC 2010)

DTC 2010 marks a new era in the Indian tax scenario after more than 50 years of operation of the current Income Tax Act, 1961 (IT Act). DTC 2010 appears to broadly retain the scheme of the existing IT Act, but, under a modified structure. The Bill intends to lend simplicity, flexibility and stability to the taxation system and also to reduce the scope for ambiguity and litigation.

With regard to taxability of income, DTC 2010 classifies the total income into "ordinary source" (includes income from employment,

June 2010 addressing some of the major identified issues. After considering the concerns expressed as a part of public consultation process, DTC 2010 was placed by the GoI before the Indian Parliament on 30 August 2010 and is envisaged to come into force from 1 April 2012. After the DTC 2010 is approved by both houses of the Indian parliament, and receives the President's assent, it would be enacted as law. Once enacted, DTC 2010 would repeal the current ITL.

income from house property, business income, capital gains and income from residuary sources) and "special source" (such as winnings from lottery, in case of non-residents). Further, with regard to the rate of taxes there has not been much change under DTC 2010 as compared to IT Act. The key tax rates proposed under DTC 2010 is enumerated below along with comparative figures contained under existing IT Act:

Particulars	Current tax rates under IT Act	Tax rates under DTC 2010
Domestic Company	30%*	30%
Foreign Company	40%*	30%
Branch Profit Tax (BPT)	Not Applicable	15% (New Tax)
DDT	15%*	15%
MAT	18.5%* of adjusted book profits	20% of adjusted book profits
Wealth tax	1% on net wealth exceeding INR3m	1% on net wealth exceeding INR-10m

*excluding surcharge and education cess

With regard to taxation of income from letting of house property, DTC 2010 provides that such income should be taxed under the head of "income from house property" notwithstanding that letting is in the nature of trade, commerce or business subject to exception in respect of Special Economic Zones, hotels, hospitals, convention centre, and cold storage. Further, standard deduction on account of repairs and maintenance is reduced from existing 30% of net annual value under the IT Act to 20% of the gross rent under DTC 2010. However, DTC 2010 does not contemplate taxing vacant or self occupied property on a deemed basis as provided under existing IT Act, which is a welcome move.

With regard to the taxability of business income, DTC 2010 provides for a similar regime as contained under the current IT Act. However, DTC 2010 proposes a wide scope for taxing business as compared to the IT Act. Further, an important change proposed by the DTC 2010 is that every business will constitute a separate source of income, necessitating separate computation of income for each business separately. Deduction of business expenditure is allowed under three broad categories — operating expenditure, permitted financial charges and capital allowance.

No deduction for any expenditure is allowed for income from special sources. Further, DTC 2010 does not provide for inter se set off of losses between ordinary source and special source.

Under DTC 2010 it is also proposed that, all assets will be classified into business assets and investment assets. The business assets will be further classified into business trading assets and business capital assets. The income from transactions in all business assets will be taxed under the head "business income."

Income from transactions in all investment assets, i.e., other than business assets, will be taxed under the head "capital gains". The current distinction between short-term investment asset and long-term investment asset under the IT Act, on the basis of length of holding of the asset, will be eliminated except that, for assets transferred after a year of holding, the indexation benefit will be available in the computation of capital gains. However, an exception in this regard has been provided in the case of equity shares or unit of an equity-oriented fund (listed securities) on which Securities Transaction Tax (STT) has been paid. In this regard, where the aforesaid listed securities is held by the taxpayer for a period of more than one year (i.e., long-term securities), 100% deduction will be available from capital gains arising on transfer of such securities and in case where the aforesaid listed securities are held for a period of up to one year (i.e., short-term securities), deduction will be restricted to 50%. Further, the base date to determine cost of acquisition under the IT Act, i.e., 1 April 1981 will be shifted to 1 April 2000. As a result, appreciation in value of the asset till 1 April 2000 will not be liable to tax under DTC 2010.

DTC 2010 also seeks to replace profit-based tax holiday incentives (as provided under IT Act) with investment-based incentives. Under the investment-based tax incentive scheme, the taxpayer will be allowed to recover all capital and revenue expenditure (except land, goodwill and financial instrument) and will be liable to tax on profits made thereafter. The period consumed in recovering all capital and revenue expenditure will be the period of tax holiday.

With regard to levy of Minimum Alternate Tax (MAT), DTC 2010 has adopted the same approach as provided under the existing IT Act for levying MAT with reference to "book profits" but with an enhanced tax rate of 20% (18.5% under IT Act).

DTC 2010 has further proposed some of the significant changes in the international tax regime as well. Some of the key proposals in this regard are as under:

- Introduction of GAAR to serve as a deterrent against tax evasion and avoidance and to dissuade taxpayers from entering an arrangement to obtain tax benefit, a similar regime as contained in the current IT Act.
- Foreign company to be considered as Indian tax resident if its "place of effective management" (POEM) is situated in India. In this regard, POEM is defined to mean:
- Place where the board of directors (BOD)/executive directors (ED) make their decisions
- Where BOD routinely approve commercial and strategic decisions made by ED/officers, the place where ED/officers make such decisions
- Taxation of capital gains arising from "indirect transfer" of capital assets located in India, a similar regime as contained in the current IT Act.
- Introduction of Controlled Foreign Company (CFC) regime as an anti-avoidance measure aimed to provide for taxation of passive income earned by a foreign company that is directly or indirectly controlled by a resident in India.
- Levy of Branch Profit Tax (BPT) on branch office of foreign companies in India, etc.

Further, the current IT Act enables a taxpayer to choose between a tax treaty and the IT Act, whichever is more beneficial to it, subject to a valid Tax Residency Certificate (TRC). DTC 2010 adopts the same principle in this regard. However, provisions of DTC 2010 will continue to apply irrespective of beneficial tax treaty provisions if GAAR is invoked or in cases where provisions of CFC are attracted or on levy of BPT.

Overall, DTC 2010 proposes some key changes in the direct tax legislation in India aimed at eliminating distortions in the tax structure, introduce moderate levels of taxation, expand the tax base, improve tax compliance, simplify the language and lower tax litigations. However, DTC 2010 is currently in the draft stage, which has not reached its finality. One has to wait and watch on how the final DTC Bill is enacted. Once the final DTC Bill is passed by the Parliament, it will be possible to assess the actual impact on the business community.

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Transfer pricing

Did you know !

India has emerged as the world's number one, along with the US, in annual solar power generation. In wind power production, India ranks fifth in the world. And when it comes to space, scope and facilities for renewable energy expansion, India ranks fourth in the world.

M.1 **Definition of International Transactions**

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M.6 **Changes in Transfer Pricing Litigation**

Comprehensive transfer pricing regulations (TPRs) were introduced, effective 1 April 2001, with the objective to prevent MNCs from manipulating prices in intra-group transactions, e.g., by transferring their profits outside India.

Indian transfer pricing provisions are generally in line with transfer pricing guidelines for MNCs and tax administrators issued by the Organization for Economic Co-operation and Development (OECD Guidelines). However, there are some significant differences, e.g., these guidelines encompass a wider definition of the term "associated enterprise" and follow the concept of arithmetic mean as opposed to statistical measures of median/arm's length range followed internationally.

Under TPRs, any international transaction (ITN) between two or more associated enterprises (including permanent establishments) must be at arm's length price (ALP). These regulations also apply to cost-sharing arrangements. For computation of ALP, TPRs require the application of the most appropriate among all prescribed methods.

The following methods have been prescribed:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin method
- Any method, which takes into account the price for the same or similar uncontrolled transaction between non-associated enterprises, under similar circumstances, considering all the relevant facts.

However, TPRs do not mandate a hierarchy of methods.

Where more than one ALP is determined, the TPRs mandate that the arithmetic mean of such prices shall be taken to be the ALP. If the variation between the ALP and the price of ITN does not exceed a prescribed percentage of transfer price, the ITN are considered to be at arm's length. The CBDT is yet to notify the prescribed percentages as allowable variations from transfer price. However, the Finance Act 2012 has put an upper ceiling of 3% on the prescribed percentages.

TPRs require taxpayers entering into ITNs to maintain prescribed documents and information and also obtain and furnish an accountant's report, which includes prescribed details related to the ITNs being carried out, to the tax authorities. The due date for filing the accountant's report, both for corporate and non-corporate taxpayers is 30 November following the end of the relevant financial year.

The prescribed documents include details of the ownership structure, description of the functions performed, risks undertaken, assets used by the parties to the relevant transaction, etc. Failure to maintain the documentation required by TPRs or to furnish the report of a Chartered Accountant result in imposition of a penalty.

Nature of default	Possible penalty
Failure to keep and maintain documents and information with respect to an ITN	An amount equal to 2% of the value of the ITN
Failure to furnish the documents or information required by TPRs	An amount equal to 2% of the value of the ITN for each such failure
Failure to report any ITN, which is required to be reported;	An amount equal to 2% of the value of the ITN for each such failure
Maintenance or furnishing of any incorrect information or documents	An amount equal to 2% of the value of the ITN for each such failure
Failure to furnish the report of a Chartered Accountant mandated by TPRs	INR-100,000

According to TPRs, enterprises are considered to be "associated" if there is direct/indirect participation in the management, control or capital of an enterprise or by the same persons in both the enterprises. Further, TPRs suggest certain other deeming provisions, which also trigger an associated enterprise relationship. Some of the important ones among these include:

- Direct/indirect shareholding giving rise to 26% or more of voting power
- Dependence on source of raw material/consumables as well as on customers in the case of manufactured/processed goods, price and other conditions being influenced by the contracting party

- Authority to appoint more than 50% of board of directors or one or more of executive directors or members of the governing board of the other enterprise
- Dependence on borrowings, i.e., advancing loans amounting to not less than 51% of the total assets of the enterprise or providing a guarantee amounting to not less than 10% of the total borrowings

M.1 Definition of international transactions

TPRs defines ITN to mean a transaction between two or more associated enterprises, either or both of whom are non-residents and have a bearing on the profits, income, losses or assets of such enterprises. Amendments to the Finance Act 2012 have clarified the meaning of ITN. Accordingly, ITN now covers the following:

- Transactions of business restructuring or reorganization
- Financial transactions such as capital financing, including any type of long-term or short borrowing or lending or provision of guarantee, etc.
- Services related to market research, scientific research, market development, legal or accounting services
- Purchase, sale, transfer, lease or use of tangible property including building, plant and machinery, vehicles or any other article, product or thing
- Purchase, sale, transfer, lease or use of any intangible property; intangible property defined to include marketing, technology, artistic activity, goodwill, location, or include customer list, customer contracts, methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, technical data, etc.

M.2 Safe harbour rules

According to the amendment of the Finance Act (No. 2) 2009, determination of ALP with respect to ITN is subject to "safe harbour" rules, which the CBDT is empowered to draft. Safe harbour indicates the circumstances under which tax authorities accept a transfer price declared by a taxpayer. Currently, safe harbour rules are yet to be notified by the CBDT.

M.3 Dispute Resolution Panel

Please refer to the discussion in Para L.6.2

M.4 Specified Domestic Transactions (SDTs)

Finance Act 2012 has brought certain SDTs (not being ITNs) within the ambit of TPRs with effect from 1 April 2013 where the aggregate of such transactions exceeds INR 50m. The SDTs are as follows:

- Any expenditure incurred in favor of any domestic related party
- Any deductions claimed while computing taxable income, which have related party transactions
- Transactions with related domestic companies or units eligible for tax holiday; the amendments will primarily affect the following taxpayers:
    - Taxpayers with income from SEZ units
    - Developers of SEZ
    - Infrastructure developers
    - Developers of industrial park
    - Telecommunication service providers

    - Producers or distributors of power
    - Commercial producers of mineral oil/natural gas and refiners of mineral oil
    - Eligible housing projects
    - Eligible hospitals
    - Eligible Hotels and convention centers
    - Eligible taxpayers with units in North-eastern states
- Any other transaction as may be specified

M.5 Advance Pricing Arrangements (APAs)

Finance Act 2012 has introduced enabling provision effective 1 July 2012 that empowers CBDT to enter into advance pricing arrangements (APAs) with taxpayers to determine the arm's length pricing (ALP) or specifying the manner in which an ALP is to be determined in relation to the ITN to be entered with the taxpayer. Some of the salient features of the provisions are as follows:

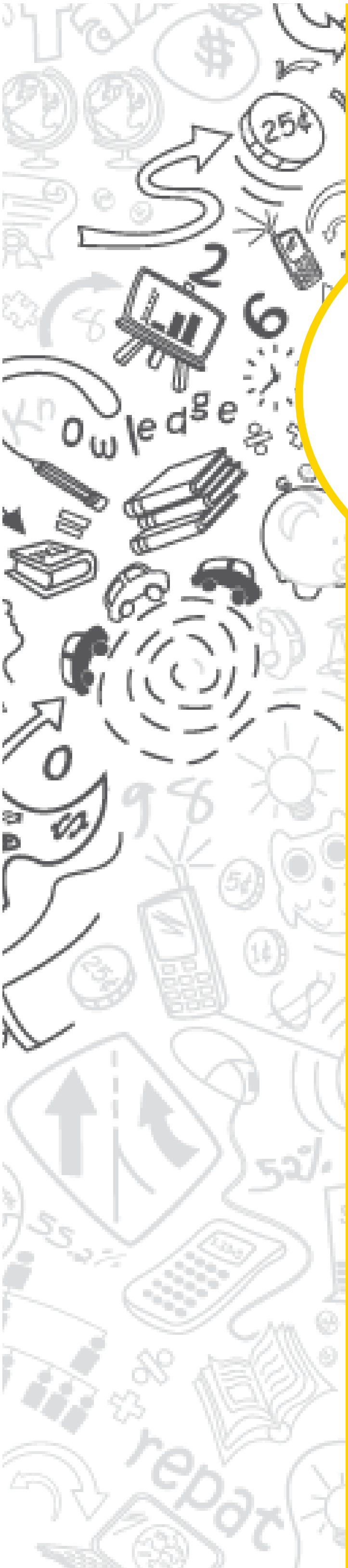
- APAs are likely to be applicable only for the specific ITN to be entered into
- APAs will be applicable for a maximum period of five consecutive years
- An APA will be binding on Income Tax authorities, the taxpayer in respect of the transaction in relation to which the APA has been entered into
- An APA will be declared void if it is found to be obtained by fraud or misrepresentation of facts
- Taxpayers are required to modify their returns of income in accordance with the APA within three months from the end of the month of entering into the APA
- The AO will have to assess or reassess taxpayers in accordance with the APA concluded and the modified returns of income.
- The CBDT, which has already set up a separate team under the Director General of Income Tax, International Taxation (the APA Authority) for negotiating APAs, has recently notified the APA rules. The rules contain procedures for APA applications, information, data and forms that need to be filed etc.

M.6 Changes in Transfer Pricing regulation

The Finance Act 2012 has made the following amendments in the transfer pricing regulations (TPRs):

- The proviso benefit of the arm's length range of +/- 5% has been amended retrospectively with effect from 1 April 2002 so that the arithmetic mean of ALP will be considered to be the ALP if the difference between the arithmetic mean and the taxpayer's transfer price is greater than 5%. Further, the range is computed from the transfer price and not from the arm's length price.
- Effective 1 June 2002, the TPO is entitled to evaluate and determine ALP of any transaction, which comes to his notice irrespective of whether it has been disclosed in accountant's report filed with the AO.
- Non furnishing of report in respect of international transaction, which the taxpayer was required to furnish will now be grounds for re-opening assessment proceedings

N Indirect taxes



Did you know !

According to a survey by the Airports Council International in 2011, two of India's airports rank among top 5 airports in the world.

N.1 Customs duty

Custom duty is levied by the GoI on import of goods into India and is typically payable by the importer of goods. It is also levied on export of certain goods.

Custom duty rates depend on the classification under the Customs Tariff, which is aligned with the International Harmonized System of Nomenclature –generic rate being 28.85%.

Customs duty generally comprises the following components:

- Basic Customs Duty (BCD)
- Additional Customs Duty (CVD) –in lieu of excise duty
- Education cess/Secondary and Higher education cess
- Special Additional Customs Duty (SAD)

The CVD paid on import of goods is allowed as credit against the output excise/service tax liability, subject to conditions. Whereas, SAD paid on import of goods is allowed as credit only to a manufacturer against the output excise duty, and not to an output service provider, subject to conditions.

In case of import from related parties, the matter is typically referred to the Special Valuation Branch authorities by the customs authorities prima facie to determine if the assessable/transaction value is at arm's length. Accordingly, the relevant customs-related procedures would need to be fulfilled.

N.2 Excise duty

Excise duty is applicable on the manufacture of goods within India and is payable by the manufacturer.

Most products attract a uniform rate of 12% plus education cess at 3% of the excise duty, making the effective excise duty at 12.36%, i.e., excise duty of 12% and education cess of 0.36% (3% on excise duty).

Excise duty is generally levied on an ad valorem basis, either expressed as a percentage of the transaction value or maximum retail price (for certain specified goods). Goods manufactured in India can be exported without payment of excise duty, subject to specified conditions. Similarly, inputs used in the manufacture of goods to be exported can be procured without payment of excise duty, subject to conditions.

The Cenvat Credit Rules, 2004 (Credit Rules) allow manufacturers to take credit for specified duties, including excise duty, CVD, SAD paid on varied inputs and capital goods imported, as well as service tax paid on input services used in the manufacture of excisable goods. The manufacturer can utilize such credit to pay the excise duty applicable on the final goods manufactured. Further, credit of duty paid on capital goods will be available to the extent of 50% during the first financial year of its receipt and the balance in the subsequent period.

A lower excise duty of 2% has been provided on 131 specified goods (for which CENVAT credit would not be available), which were hitherto fully exempt or chargeable to zero excise duty. Alternatively, an option to avail CENVAT credit by charging a duty of 6% on specified 68 items is also available.

N.3 Service tax

Service tax is applicable on the provision of services in India. It is also applicable on import of services in India where service recipient is required to discharge service tax liability in cash (under reverse charge mechanism). The present rate of service tax is 12.36% i.e. 12% service tax and education cess of 0.36% (3% on service tax).

The GoI has introduced negative list-based taxation of services with effect from 1 July 2012. In view of this, except 17 negative services (mainly provided by or to GoI or state governments, health care services, agriculture, trading, etc.) and 39 specifically exempt services, all other services are taxable unless it is:

- Sale/purchase of goods (including deemed sale)
- Transfer or gift of immovable property
- Transaction in money or actionable claim

Service provided by employee to employer in the course of employment. For certain specified services, the onus of paying service tax is partly on service provider and partly on service recipient. Currently, this provision will apply for hiring of motor vehicle, supply of manpower and works contract services when provided by an individual, HUF, partnership firm or AOP to a body corporate.

Services provided outside India will not be liable to service tax: Such services will be deemed as exports subject to fulfilment of conditions. In respect of services, which qualify as exports, a mechanism has been provided, which prescribes an option for the exporter to claim rebate/ refund of excise duty/CVD/service tax paid on input/input services used for export of service.

Place of Provision of Services Rules, 2012 (PPOS), have been introduced with effect from 1 July 2012 to determine the place where a service shall be deemed to be provided. A service shall be taxable only when inter alia it is provided in the taxable territory (i.e., India excluding J&K). In other words, the taxability of a service will be determined based on its place of provision according to PPOS.

According to the Point of Taxation Rules, 2011, the point of taxation for payment of service tax shall be the date of issue of the invoice or the date of receipt of payment for service by the service provider, whichever is earlier. However, where the invoice is not raised within 30 days of completion of provision of service, the point of taxation shall be the date of such completion. In case of services provided continuously or on recurrent basis for a period exceeding three months, under a contract and with an obligation for periodic payment, the date of completion shall be the date of completion of each event as specified under such contract. Further, where the service recipient is required to pay service tax under reverse charge mechanism (i.e., as the importer of service), the point of taxation shall be the date on which such payment is made (provided that payment is made within six months from the invoice date).

The Credit Rules allow the service provider to take credit of duties, including excise duty, CVD paid on inputs and capital goods and service tax paid on input services used to provide taxable output services, subject to conditions. Also, a service recipient is allowed to take credit of the service tax paid on import of services in cash against its output excise or service tax liability.

Credit of SAD paid on import of goods is not available to offset output service tax liability. There is no credit of duty/tax paid on input/input services that are used exclusively to provide non-taxable or exempt services.

N.4 VAT/CST

VAT is an intra-state multi-point tax system administered at the state level and is levied on sale of goods at each stage of sale. Currently, all the states in India have replaced their erstwhile sales tax regime with VAT.

The basic rate slabs under VAT are as follows:

- 0% for natural and unprocessed products and other essential goods
- 1% to 2% for special goods such as gold, bullion, silver, etc.
- 4%/5% for agricultural and industrial input, IT products, capital goods and intangible goods, i.e., patents and others, as well as items of basic necessity
- 12.5% to 15% for all other goods that do not fall under any of the categories mentioned above

Interstate sales continue to be liable to Central Sales Tax (CST), which is imposed by the GoI and administered by state governments. The rate of CST is 2%, subject to provision of prescribed declaration form by the purchaser. In the absence of a prescribed declaration form, the VAT rate as applicable in the selling state will apply (i.e., ranging from 4%/5%– 12.5%/15%). Declaration forms are only issued when the goods are procured for (i) resale, (ii) for use in manufacture or processing of goods for sale, (iii) a telecommunications network, (iv) for use in mining or (v) for use in generation or distribution of electricity or any other form of power.

It is proposed that CST will be phased out on introduction of Goods and Service Tax (GST).

Further, a sale involving import of goods from outside India is not liable to VAT/CST, subject to the prescribed conditions. Moreover, sale of goods (including penultimate sale) involving export of goods from India is also not liable to VAT/CST.

Input tax credit is available with respect to VAT paid on locally procured goods, including capital goods (other than the "negative list" of goods provided under respective state VAT laws). The credit can be set off against output VAT liability, including output CST. However, no input credit is available in respect of CST paid on procurements and hence, it is a cost to the purchaser.

N.5 Octroi/entry tax

Entry tax/Octroi is levied by state/local authorities on the entry of goods within its jurisdiction, for use, consumption or sale on the purchase value of the goods. For this purpose, the state is divided into different local areas. The value of the entry tax levied on different products can vary from state to state.

It is relevant to note that the constitutional validity of entry tax laws is currently a subject of dispute. The applicability and status of the dispute needs to be examined on a state-to-state basis.

Octroi is applicable in the state of Maharashtra at various local municipal jurisdictions. The rate varies from 2% to 7%. Octroi paid is a cost as no credit is available.

N.6 Research and Development Cess

The Research and Development Cess is levied by the GoI at 5% on import of technology by an industrial concern into India in terms of a foreign collaboration or other specified cases. This cess is required to be paid by the importer of technology on payments made for such imports.

"Technology" has been defined to mean special or technical knowledge or special service required by an industrial concern under any foreign collaboration including designs, drawings, publications and technical personnel.

The service tax legislation exempts the taxable service involving import of technology, from so much of the service tax leviable thereon, as is equivalent to the amount of cess paid on the said import of technology.

N.7 Other significant indirect taxes

N.7.1 Stamp duty

Stamp duty is paid for a transaction executed by way of a document or instrument under the provisions of the Indian Stamp Act or the State Acts. Stamp duty is applicable on purchase of immovable property and also on various other transactions, e.g., lease, conveyance, mortgage, partitions, transfers, etc. Levy of stamp duty is generally dependent on the state where the agreement is executed. Typically, for immovable property, this duty is payable in the state where the property is located. Payment of accurate stamp duty on instruments gives them legality. Such instruments have evidentiary value and can be admitted as evidence in a court of law. Instruments that are not properly stamped are not admitted as evidence in a court of law. The rates of stamp duty on instruments related to the transfer of immovable property vary from state to state from 3% to 10% on fair/true market value of the property. Stamp duty can be paid by using stamp paper, adhesive stamps or by franking.

The rate of duty is generally calculated on an ad valorem basis, depending on the nature of the instrument and the state where it is executed. Further, stamp duty can be levied at a flat rate on a certain document, irrespective of the amount involved.

N.7.2 Profession tax

Profession tax is a state levy on professions, trades, a calling or employment in a state. Thus, every person who is engaged in any of the activities mentioned above is liable to pay profession tax. Not all the state governments levy profession tax currently.

In states where such a levy exists, every enterprise and every employee earning salaries is required to register and pay profession tax. In case of salaried employees, the employer is required to deduct profession tax from the salary paid to its employees at specified rates and deposit it into the Government treasury. The employer is liable to pay the requisite amount of profession tax on such salaries or wages, irrespective of whether it has deducted an equivalent amount from the salaries paid.

Further, employers/businessmen/professionals, etc., are also required to pay profession tax at specified rates in their own capacity.

N.7.3 STT

STT is levied on the value of a taxable securities transaction, as depicted below:

Transaction	Rates	Payable by
Purchase/sale of equity shares, units of equity- oriented mutual funds (delivery-based)	0.1%	Purchaser/seller (both)
Sale of equity shares, units of equity-oriented mutual funds (non-delivery based)	0.025%	Seller
Sale of an option in securities	0.017%	Seller
Sale of an option in securities, where an option is exercised	0.125%	Purchaser
Sale of futures in securities	0.017%	Seller
Sale of units of equity- oriented funds to a mutual fund	0.25%	Seller
Sale of unlisted equity shares under an offer for sale to the public included in an initial public offer and where such shares are subsequently listed on a recognized stock exchange	0.2%	Seller

N.7.4 Luxury tax

Luxury tax is a state levy on certain specified luxuries and certain facilities, services, enjoyments, utilities, etc. Generally, luxury tax is levied on specific accommodation and services provided in hotels and clubs of a specific kind and on certain commodities.

N.7.5 Property tax

The owner of a property (usually real estate) is liable to pay property tax. The amount of tax is estimated on the value of the property being taxed (ad valorem tax) at applicable rates. Property tax is levied on residents by local municipal authorities in India, to sustain basic civic services in the city.

N.7.6 Entertainment tax

State and local governments levy entertainment tax on various entertainment and amusement activities. Traditionally, film exhibition, cable/DTH subscriptions, video games, amusement parks, and events have been subject to entertainment tax. Some of the states also consider entertainment provided through telecom and the internet to be subject to entertainment tax. Entertainment tax rates are fairly high as compared to taxes levied on other luxury goods and services and depend on the relevant state and the entertainment activity. For example, the entertainment tax rate for movie exhibition in Mumbai is as high as 45%, while in Rajasthan there is an exemption from entertainment tax. Further, many states offer benefits to new multiplexes, sports events and certain films subject to specific conditions.

N.8 Goods and Services Tax legislation (GST)

The GoI has proposed that the indirect tax regime in India be replaced by a comprehensive dual GST, to be levied concurrently by the Centre (CGST) and the states (SGST). It is anticipated that the base for the GST will be comprehensive, including virtually all goods and services, with minimum exemptions. The GST structure will follow the destination principle, i.e., imports will be included in the tax base, while exports will be zero-rated. In the case of inter-state transactions within India, the state tax will apply in the state of destination as opposed to that of origin.

The following are the key taxes proposed to be subsumed under the GST:

Central taxes	State taxes
▸ Central Excise Duty (including additional excise duties) ▸ Service tax ▸ Additional customs duty ▸ Special additional customs duty	▸ VAT/sales tax ▸ Entry tax not in lieu of Octroi ▸ Entertainment tax (other than entertainment tax levied by local bodies) ▸ Stamp duty ▸ Taxes on Vehicles

Central taxes	State taxes
‣ Surcharges and cesses ‣ CST	‣ Taxes on Goods and Passengers ‣ Taxes and duties on electricity ‣ Luxury tax ‣ State cesses and surcharges ‣ Taxes on lottery, betting and gambling

The following are the key taxes not to be subsumed under the proposed GST:

Central taxes	State taxes
‣ Customs and export duties ‣ Duties of excise on specified petroleum products, natural gas and tobacco	‣ Excise duty on alcohol

Full input credit system will operate parallely for CGST and SGST. GST paid on the procurement of goods and services will be available for credit against that payable on the supply of goods or services. The consumer, being the last person in the supply chain, will bear the tax, with no right of input tax credit. Cross utilization of input tax credit between CGST and SGST will not be permitted.

GST has been envisaged as a more efficient tax system that will widen the tax base, do away with the multiplicity of taxes and their cascading effects, minimize competitive distortions, and encourage better compliance.

The new tax structure will have a significant impact on all businesses –manufacturers, traders and service providers – and on all aspects of their activities, including supply chains and logistics, product pricing, dealer margins, and IT and accounting systems.

Many of the design features of the GST are yet to be finalized. They are being discussed by the GoI and the states.

On 16 March 2011, the Constitution (One Hundred and Fifteenth Amendment), Bill, 2011 (GST Bill) was introduced in the Parliament, which seeks to introduce articles effecting the introduction of the GST and the introduction of the GST Council. According to the existing structure of indirect taxation, the Parliament has the power to make laws on the manufacture of goods and the provision of services while the State Legislatures have the power to make laws on the sale and purchase of goods within their respective states. The Parliament has retained the exclusivity to make laws pertaining to sale of goods in the course of inter-state trade or commerce.

The key highlights of the GST bill are as under:

- Article 246A introduced for enabling concurrent powers to levy GST.
- GST has been defined to mean any tax on supply of goods or services or both except taxes on supply of — petroleum crude, high speed diesel (HSD), petrol, natural gas, Aviation Turbine Fuel (ATF) and alcoholic liquor for human consumption.
- State governments will have the power to levy tax on sale of petroleum crude, HSD, petrol, natural gas, ATF and alcoholic liquor for human consumption. Municipalities or Panchayats shall have the powers to levy tax on entry of goods into local area for consumption, use or sale therein and tax on entertainment and amusement.
- Parliament will be given exclusive powers to levy GST on interstate trade imports, exports, apportion revenues between states and the Centre, constitute GST Council, to constitute GST Dispute Settlement Authority etc.

The GoI had expressed its intention to introduce a national-level GST by 1 April 2012. However, keeping in mind the current state of affairs, the expected date of implementation of GST is still uncertain and a clear roadmap for implementation of GST is still awaited.

However, the GoI is taking other positive and concrete steps toward the introduction of GST and to ensure a smooth transition from the current system. For the said purpose, the Finance Minister of India while presenting the Union Budget 2012 had proposed to make GST Network (GSTN) operational from August 2012 — to implement common PAN-based registrations, returns, and payments processing for all states on a shared platform.

O Incentives

Did you know !

According to the Global Retail Development Index 2012, India ranks fifth among the top 30 emerging markets for retail.

Tax incentives

The GoI, for the purpose of accelerated growth of the Indian economy, have extended incentives in the form of tax holiday, deductions, rebates etc under the direct/indirect taxes. Primarily, such incentive relates to export promotion, new industrial undertaking, infrastructure facilities, software industry, research, promotion of backward areas etc.

Herein, we have briefly referred to incentives provided under the IT Act. The provisions herein, will likely need to read with the terms and conditions specific to each incentive provided in the law.

The incentives herein have been provided under the following broad categories:

O.1 Incentives for Special Economic Zone (SEZ)

SEZs are defined as a specifically delineated duty-free enclave deemed to be foreign territory for the limited purposes of trade operations and duties and tariffs. With the SEZ scheme, GoI aims to promote export-led growth of the economy, supported by integrated infrastructure for export production and a package of incentives to attract foreign and domestic investment.

The SEZ Act, 2005, supported by SEZ Rules, came into effect on 10 February 2006, which provides for drastic simplification of procedures and for single window clearance on matters related to Central as well as state governments. The new SEZ policy focuses on creation of an internationally competitive and hassle-free environment for exports.

Tax holiday for units in SEZ

Undertakings located in SEZ and engaged in manufacture or production of articles or things or provision of services is eligible to claim 100% deduction in respect of export profits for a period of five years. For the next 10 years, deduction of 50% of the profits is allowed (for the last five years, deduction is subject to transfer of profits to investment reserve).

Though tax holiday is enjoyed by units in SEZ, they are required to pay MAT on book profits and Dividend Distribution Tax on income distributed as dividend.

Tax holiday for SEZ developers

SEZ developers are eligible to claim 100% deduction of its business profits for 10 years (out of 15 years) beginning from the year in which SEZ is notified by the GoI.

Though tax holiday is enjoyed by units in SEZ, they are required to pay Minimum Alternate Tax on book profits and DDT on income distributed as dividend.

Tax holiday for offshore banking units and international financial services centers located in SEZ

A scheduled bank or an offshore banking unit of a foreign bank or a unit of international financial services center located in the SEZ is eligible to claim 100% deduction in respect of the specified income for five years and 50% for the next five years.

Indirect tax benefits for SEZ

SEZ developers/units are eligible to avail exemption of customs duty on import of goods, excise duty on locally procured goods, CST on inter-state sale/purchase of goods and service tax on taxable services received for carrying out its authorized operations. The above benefits/exemptions are typically available, subject to fulfillment of prescribed procedures and conditions.

Similarly, exemption/concessions from local levies such as VAT, entry tax, stamp duty, registration charges, electricity duty etc., can be available only in states where the state governments have granted such exemption from local state levies.

O.2 Profits-linked incentives

New undertakings are those that are formed by means other than the division or reconstruction of a business already in existence or the transfer of machinery or plant, previously used in India for another purpose (subject to certain exceptions), to a new business. The following table details the available tax exemptions:

Nature of business undertaken	Quantum of Deduction	Commencement period
Incentives for Infrastructure Sector		
Undertakings engaged in generation or generation and distribution of power	100% for 10 years (out of the first 15 years)	1 April 1993 to 31 March 2013
Undertakings engaged in laying a network of transmission or distribution lines	100% for 10 years (out of the first 15 years)	1 April 1999 to 31 March 2013
Undertakings engaged in carrying out substantial renovation and modernization of existing transmission or distribution lines	100% for 10 years (out of the first 15 years)	1 April 2004 to 31 March 2013
Incentives for infrastructure sector		
Developing/operating and maintaining/developing, operating and maintaining infrastructure facilities such as: ‣ A road including toll road, a bridge or a rail system ‣ Highway project including housing or other activities being an integral part of the highway project ‣ Water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system ‣ A port, airport, inland waterway, inland port or navigational channel in the sea	100% for 10 years (out of the first 20 years) @	On or after 1 April 1995

Nature of business undertaken	Quantum of Deduction	Commencement period
Operating and maintaining a hospital (with at-least 100 beds)	100% for the first 5 years	1 April 2008 to 31 March 2013
Hotel in the specified district, which have a World Heritage Site	100% for the first 5 years	1 April 2008 to 31 March 2013
Incentives for oil and gas sector		
Commercial production of mineral oil	100% for the first 7 years	On or after 1 April 1997
Commercial production of natural gas in licensed blocks		On or after 1 April 2009
Incentives for undertakings in specified geographical locations		
Permitted activities in the North Eastern states : ▸ Manufacturing or producing eligible article or thing or substantial expansion in connection therewith ▸ Hotel (not below 2 star category) ▸ Adventure and leisure sports including ropeways ▸ Providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds ▸ Manufacture of IT-related hardware ▸ Biotechnology ▸ Operational vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training ▸ IT-related training center ▸ Old age home	100% for the first 10 years	1 April 2007 to 31 March 2017

Nature of business undertaken	Quantum of Deduction	Commencement period
Other incentives		
Processing, preservation and packaging of fruits or vegetables or from the integrated business of handling, storing and transporting food grains	100% for the first 5 years 30% for the next 5 years #	On or after 1 April 2001
Collecting and processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure	100% for the first 5 years	

Profit-linked incentives no longer available for potential investments though deduction will continue to be available up to the time period specified in the IT Act for eligible existing businesses set up in the earlier years:

- Provision of telecommunication services (whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services)
- Processing, preservation and packaging of meat/meat products, or poultry or marine or dairy products
- Development/development and maintenance/operations and maintenance of an industrial park notified by the Central Government

@ In the case of ports, airports, inland waterways, inland ports and navigation channels in the sea, the exemption is available for 10 years falling within the period of the first 15 years

North Eastern States states comprise of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura

25% in case of non-companies

- Reconstruction or revival of a power generating plant
- Manufacture or production of article or thing or operation of cold storage plant by industrial undertaking in industrially backward states/industrially backward districts
- Indian company undertaking scientific research and development as its main object
- Establishment and operation of a cold chain facility for agricultural produce
- Operating and maintaining a hospital in a rural area
- Manufacture or production of any article or thing in the specified states other than those specified in the Thirteenth Schedule
- Manufacture or production of any article or thing specified in the Fourteenth Schedule in the specified states
- Hotel located in specified area
- Building, owning and operating a convention center, located in specified area

O.3 Investment-linked incentives

O.3.1 Deduction for specified businesses

With a view to encourage diversion of profits from the taxed sector to the exempt/non-taxed sector, investment-linked incentives in the form of a deduction for capital expenditure (excluding expenditure incurred on acquisition of land, goodwill or financial instrument) incurred prior to the commencement of operations shall be allowed for specified businesses mentioned below. Such expenditure has to be capitalized in the books of account on the date of commencement of business.

Nature of expense	Quantum of deduction
Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution including storage facilities being integral part of such network	100%
Building and operating a new hotel of two-star or above category as classified by the GoI	100%
Building and operating a new hospital (with at least 100 beds)	150%
Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the GoI or state governments and is notified by the CBDT in this behalf in accordance with the guidelines prescribed	100%
Developing and building a housing project under a scheme for affordable housing framed by the GoI or state governments and which is notified by the CBDT on this behalf in accordance with the guidelines prescribed	150%
Producing fertilizer in a new plant or in a newly installed capacity in an existing plant	150%
Setting up and operating an inland container depot or a container freight station notified or approved by the Customs Act, 1962	100%
Bee-keeping and production of honey and beeswax	100%
Setting up and operating a cold chain facility	150%
Setting up and operating a warehousing facility for storage of agricultural produce	150%
Setting up and operating a warehousing facility for storage of sugar	100%

O.3.2 Incentives for R & D:

Nature of expense	Quantum of deduction
Revenue expenditure incurred on payment of salary to an employee engaged in scientific research or on purchase of materials used in such scientific research during the three years preceding the commencement of business	100%
Payment to a research association/university, college or other institution for scientific research	175%
Payment to an Indian company to be used for scientific research and development that fulfills certain conditions	125%
Payment to a research association/university or college or other institution for research in social science or statistical research (notified by the GoI)	125%
Capital expenditure incurred in any financial year and within the three years immediately preceding the financial year (other than on acquisition of land)	100%
Expenditure by a company engaged in bio-technology/manufacture or production of any article or thing (except those mentioned in the Eleventh Schedule) for scientific research on approved in-house research and development facility (other than expenditure on land or building) incurred up to 31 March 2017	200%
Payment to a National Laboratory/University/Institute of Technology/specified person (notified by the GoI) for scientific research undertaken under an approved program	200%

- **Deduction for specified projects notified by the CBDT:**

Deduction will be available at 150% of the expenditure incurred on the following:

- Agricultural extension project to be notified by the CBDT
- Skill development project (excluding expenditure on land or building) to be notified by the CBDT

O.4 Accelerated depreciation

Any new machinery or plant (other than the specified machinery or plant) acquired and installed by an undertaking engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power, is entitled to additional depreciation of a sum equal to 20% of the actual cost of such machinery or plant.

O.5 State-level incentives

Many states have been keen to attract investments to set up new units/ expanding existing units to develop states in terms of infrastructure, education and create employment. For these purposes the states offer many investment limited incentives.

Concessions/exemptions to a large and mega unit are typically granted depending on the quantum of investment proposed to be made, strategic importance of the project, proposed employment that will be generated by the project and other similar criteria.

Exemptions/incentives that are provided to the investing units typically depend upon the negotiations between the parties involved (i.e., the investor and the respective state governments) and it varies from state to state and sometimes even from government to government.

Going forward, state-level incentives are expected to be a new factor for driving future investment especially as specific area-based exemption schemes granted by the Central Government in Himachal Pradesh, Uttaranchal and Kutch district of Gujarat have reached its sunset point. However, these benefits are still continued in the North Eastern region.

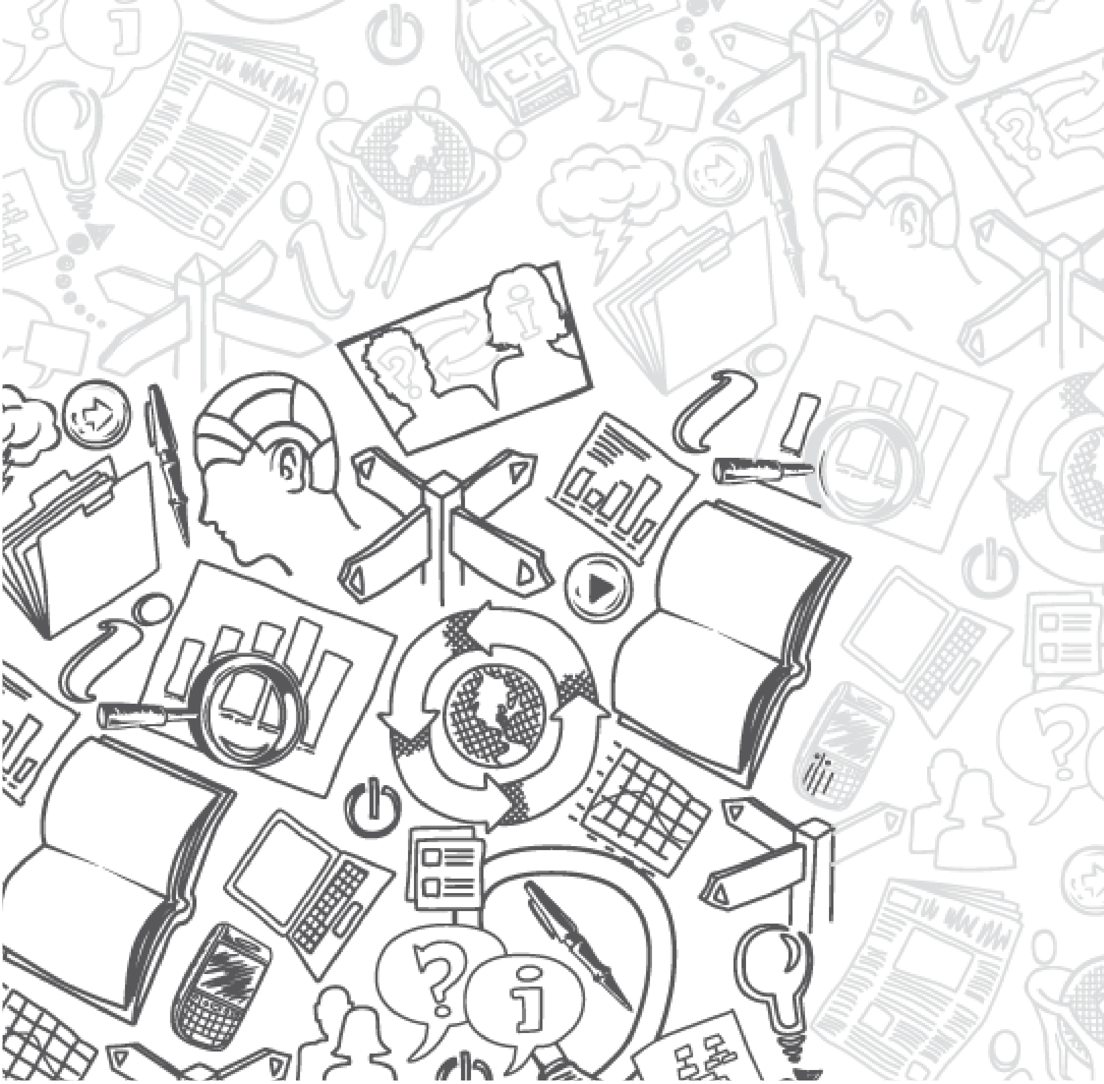
O.6 Export Incentives under Foreign Trade Policy (FTP)

India's FTP covers policies related to fiscal incentives, rationalized procedures, increased access to global markets and diversification of its export market.

The policy provides for certain export promotion schemes such as:

- Export Promotion Capital Goods – to allow import of capital goods at concessional duty rates (for production of export output)
- Advance authorization — to enable duty free procurement of input required (for manufacturing of goods to be exported)
- Served from India Scheme (SFIS) —service provider with service exports outside India worth INR1m or more in the current financial year is eligible to claim the benefit of the duty credit script under the SFIS. The service provider can utilize such duty credit scripts for payment of customs duties on import of goods in India or for payment of excise duty on procuring goods manufactured in India

P Appendices



Did you know !

India's total investment in infrastructure is projected to be around US$1 trillion during the Twelfth Five Year Plan (2012-2017).

App. 1:	**List of frequently used abbreviations**
App. 2:	**Useful addresses and telephone numbers**
App. 3:	**Exchange rates**
App. 4:	**FDI policy**
App. 5:	**Corporate Tax calculation**
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App. 7.1:	Individual Income Tax calculation
App. 7.2:	Taxability of income items
App. 7.3:	Sample tax calculation

Appendix 1: List of frequently used abbreviations

ADR	American Depository Receipt
AMT	Alternate Minimum Tax
ABPO	Business Process Outsourcing
CAGR	Compounded Annual Growth Rate
CBDT	Central Board of Direct Taxes
CCI	Competition Commission of India
Cos Act	Companies Act
DTC	Direct Tax Code
DTAA	Double Taxation Avoidance Agreement
FCCB	Foreign Currency Convertible Bond
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIMMDA	Fixed Income Money Market and Derivatives Association of India
FIPB	Foreign Investment Promotion Board
FTP	Foreign Trade Policy
FY	Financial Year
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDR	Global Depository Receipt
INR	Indian Rupee
IRDA	Insurance Regulatory and Development Authority

IT	Information Technology
IT Act	Income Tax Act, 1961
ITES	IT Enabled Services
Km	Kilometers
MAT	Minimum Alternate Tax
MNC	Multinational Company
MoF	Ministry of Finance
MoP	Ministry of Power
MoPNG	Ministry of Petroleum and Natural Gas
NBFC	Non-Banking Financial Company
NELP	New Exploration and Licensing Policy
NRI	Non-resident Indians
PIO	Person of Indian Origin
ROI	Return of Income
RBI	Reserve Bank of India
ROC	Registrar of Companies
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
STT	Securities Transaction Tax
TRAI	Telecom Regulatory Authority of India
VAT	Value Added Tax
WTO	World Trade Organization

Appendix 2: Useful addresses and telephone numbers

Securities and Exchange Board of India	Plot No.C4-A,'G' Block, Bandra -Kurla Complex, Bandra(East), Mumbai 400051 Telephone: (22) 2644 9000/4045 9000 Fax: (22) 2644 9016-20/4045 9016-20 Website: www.sebi.gov.in
Ministry of Corporate Affairs	'A' Wing, Shastri Bhawan Rajendra Prasad Road, New Delhi - 110 001 Telephone : (11) 23384158, 23384660, 23384659 Website: www.mca.gov.in
Telecom Regulatory Authority of India	Mahanagar Doorsanchar Bhawan, (next to Zakir Hussain College) Jawaharlal Nehru Marg (Old Minto Road) New Delhi : 110 002 Telephone: (11) 2323 6308/2323 3466/2322 0534/2321 3223 Fax: (11) 2321 3294 Website: www.trai.gov.in
Central Revenue Building (Income Tax Office)	IP Estate Delhi: 110002 Website: www.incometax.gov.in
Directorate General of Shipping	Jahaz Bhavan, Walchand H. Marg, Mumbai - 400 001 Telephone: (22) 2261 3651-4 Fax: (22) 2261 3655 Website: www.dgshipping.com
Central Drugs Standard Control Organization	FDA Bhavan, ITO, Kotla Road, New Delhi -110002 Telephone: (11) 2323 6965/2323 6975 Fax: (11) 2323 6973 Website: www.cdso.nic.in

National Highways Authority of India	National Highways Authority of India, G 5&6, Sector-10, Dwarka, New Delhi - 110 075 Telephone: (11) 2507 4100/2507 4200 Fax : (11) 2509 3507/2509 3514 Website: www.nhai.org
Department of Commerce	Department of Commerce Ministry of Commerce and Industry Udyog Bhawan, New Delhi 110 107 Telephone: (11) 2306 2261 Fax: (11) 2306 3418 Website: www.commerce.gov.in
Ministry of Environment and Forests	Paryavaran Bhavan CGO Complex, Lodhi Road New Delhi - 110 003 Telephone: (11) 2436 0605/2436 0570/2436 0519 Website: www.moef.nic.in
Ministry of Mines	3rd Floor, A wing, Shastri Bhawan, New Delhi 110001, Telephone: (11) 2307 3233 Website: www.mines.nic.in
Ministry of Steel	Government of India Udyog Bhavan New Delhi - 110107 Telephone : (11) 2306 3417 Fax : (11) 2306 3236 Website: www.steel.nic.in
Ministry of Textiles	Udyog Bhavan , New Delhi-110011 Telephone: (11) 2306 1338/18/14 Fax: (11) 2306 3711/2306 3681 Website: www.texmin.nic.in

Indian Banks Association	6th Floor, Center 1 World Trade Center Complex Cuffe Parade Mumbai 400005 Telephone: (22) 2217 4040 Fax: (22) 2218 4222 Website: www.iba.org.in
Bulk Drugs Manufacturers Association	C-25, Industrial Estate Near SBH, Sanath Nagar Hyderabad 500018 Telephone: (40) 2370 3910/6718 Fax: (40) 2370 4804 Website: www.bdmai.org
Association of Mutual Funds in India	One Indiabulls Centre, Tower 2, Wing B, 701, 7th Floor, 841 Senapati Bapat Marg, Elphinstone Road, Mumbai - 400 013 Telephone: (22) 2421 0093/2421 0383/4334 6700 Fax: (22) 4334 6712/4334 6722 Website: www.amfiindia.com
Chemicals and Petrochemicals Manufacturers' Association	10th Floor, Vijaya Building, 17 Barakhamba Road, Connaught Place, New Delhi - 110011 Telephone : (11) 2332 0608/23326377
All India Plastics Manufacturers' Association	AIPMA House, A-52, Street No. 1, M.I.D.C. Marol, Andheri East, Mumbai - 400 093 Telephone: (22) 2821 7324-25/2835 2511-12 Fax: (22) 28216390 Website: www.aipma.net

Organization of Pharmaceutical Producers of India	Peninsula Chambers, Ground Floor, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013. Telephone: (22) 2491 8123/2491 2486/6662 7007 Fax: (22) 2491 5168 Website: www.indiaoppi.com
Association of Biotechnology Led Enterprises	ABLE Secretariat # 123/C, 16th Main Road 5th Cross, 4th Block Koramangala Bangalore – 560034 Telefax: (80) 4163 6853/2563 3853 Website: www.ableindia.in
India Semiconductor Association	UNI Building, Millers Tank Bund Road, Bangalore - 560 052 Telephone: (80) 4147 3250 Fax: (80) 4122 1866 Website: www.isaonline.org
The Indian Broadcasting Foundation	B-304, Third floor, Ansal Plaza, Khelgaon Marg, Andrewsganj, New Delhi – 110049 Telephone: (11) 4379 4444 Fax: (11) 4379 4455 Website: www.ibfindia.com
Federation of Indian Export Organizations	Niryat Bhawan, Rao Tula Ram Marg Opp. Army Hospital Research & Referral, New Delhi-110 057 Telephone: (11) 4604 2222/2615 0101-04 Fax: (11) 2614 8194/2615 0066/2615 0077 Website: www.fieo.org
Invest India	Federation House, Tansen Marg New Delhi 110001, India Telephone: +91-11-2376 8760-70 Fax: +91-11-2332 0714, 2372 1504 Website: www.investindia.gov.in

Appendix 3: Exchange rates

The table below provides RBI reference exchange rates for the Indian rupee against the four major currencies as on 13 July 2012

Currency	Exchange rate
US dollar	55.13
Euro	66.98
UK pound	84.90
Japanese yen (per 100 JPY)	69.17

Source: State Bank of India (SBI)

Appendix 4: FDI policy

Illustrative list of sectors/activities in which FDI is prohibited/permitted with conditions or sectoral caps

Sectors/activity prohibited for investment in India

- Retail trading (except single brand product retailing)
- Lottery business including government/private lottery, online lotteries, etc.
- Gambling and betting including casinos etc.
- Business of chit fund
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real estate business or construction of farm houses
- Manufacturing of cigars, cheroots, cigarillos and cigarettes of tobacco or of tobacco substitutes
- Activities/sectors not opened to private sector investment including Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract for lottery business and gambling and getting activities

Sector/activity permitted with conditions or sectoral caps

- Agriculture and animal husbandry
- Tea plantation
- Mining
- Petroleum and Natural gas
- Manufacture of items reserved for production in micro and small enterprise (MSEs)
- Defence
- Broadcasting
- Print media
- Civil aviation
- Courier services
- Construction development: townships, housing, built-up infrastructure
- Industrial parks new and existing
- Satellites-establishment and operation
- Private security agencies
- Telecom sector
- Trading
- Asset reconstruction companies
- Banking — private and public sector
- Commodity exchanges
- Credit information companies (CIC)
- Infrastructure company in the securities market
- Insurance
- Non-banking finance companies (NBFCs)
- Pharmaceuticals

Investment in sectors that are otherwise permitted under the automatic route for 100% foreign investment through limited liability partnerships in India

Appendix 5: Corporate tax calculation

The following example illustrates the computation of taxable income and tax liability of a domestic company for the tax year 1 April 2012 to 31 March 2013:

Net profit as per financial statement		**14,500,000**
Less:		
Net dividends received from domestic company	(2,000,000)	
(exempt from tax)		
Income from sub-leased property	(200,000)	
(considered separately)		(2,200,000)
Add:		12,300,000
Provision for tax	9,000,000	
Depreciation as per financial statements	3,000,000	
Disallowed expenses	200,000	
(such expenses are not related to the business)		12,200,000
		24,500,000
Less:		
Tax depreciation		(5,560,000)
Business income		18,940,000
Income from other sources:		
Net income from sub-leased property		200,000
Gross total income		19,140,000
Taxable income		**19,140,000**
Calculation of tax		
Income tax at 30% on Rs. 19,140,000		5,742,000
Add:		
Surcharge at 5% (since total income more than INR10 m)		287,100
Education cess at 3%		180,873
Tax payable		**6,209,973**
Less:		
Advance tax paid during the tax year		(5,700,000)
Balance tax payable/(refundable) with ROI (1)		509,973

Liability for tax excludes the interest chargeable on account of underpayment of advance tax.

Appendix 6: Treaty tax rates

The following table presents the treaty rate or the rate under the domestic tax laws on outbound payments for countries that have concluded double tax avoidance treaties with India, whichever is lower. Further, under the Indian Income Tax Act, 1961, Indian companies must pay DDT at the rate of 15% plus a surcharge of 5% and an education cess of 3% on dividends declared, distributed or paid by them. Such dividends are exempt from tax in the hands of the recipients.

Country	Interest (%)	Royalty(%) (f)
Armenia	10 (b)	10 (d)
Australia (o)	15	10 (c)(k)
Austria	10 (b)	10 (d)
Bangladesh	10 (b)	10 (d)
Belarus	10 (b)	10 (c)
Belgium	15 (b)	10 (e)
Botswana	10 (b)	10 (d)
Brazil	15 (b)	10 (c)
Bulgaria	15 (b)	10 (c)
Canada	15 (b)	10 (c)(k)
China	10 (b)	10 (d)
Columbia (m)	10	10 (d)
Cyprus	10(b)	10 (c)
Czech Republic	10 (b)	10 (d)
Denmark	15 (b)	10 (c)
Ethopia (l)	10	10 (d)
Estonia (p)	10 (b)	10 (d)
Finland	10 (b)	10 (d)
France	10(b)(e)	10 (d)(e)
Germany	10 (b)	10 (d)
Georgia (n)	10 (b)	10 (d)

Country	Interest (%)	Royalty(%) (f)
Greece	20 (a)	10 (c)
Hungary	10(b)(e)	10 (c)(e)
Iceland	10 (b)	10 (d)
Indonesia (aa)	10 (b)	10 (c)
Ireland	10 (b)	10 (d)
Israel	10(b)(e)	10 (d)(e)
Italy	15 (b)	10 (c)
Japan (g)	10 (b)	10 (c)
Jordan	10 (b)	10 (c)
Kazakhstan	10(b)(e)	10 (d)(e)
Kenya	15 (b)	10 (c)
Korea	15 (b)	10 (c)
Kuwait	10 (b)	10 (d)
Kyrgyz Republic	10 (b)	10 (c)
Libya	20 (a)	10 (c)
Lithuania (q)	10 (b)	10 (d)
Luxembourg	10 (b)	10 (d)
Malaysia (r)	10 (b)	10 (d)
Malta	10 (b)	10 (c)
Mauritius	20 (a)(b)	10 (c)
Mexico	10 (b)	10 (d)
Mongolia	15 (b)	10 (c)
Montenegro	10 (b)	10 (d)
Morocco	10 (b)	10 (d)
Mozambique (j)	10 (b)	10 (d)
Myanmar	10 (b)	10 (d)
Namibia	10 (b)	10 (d)
Nepal (s)	10 (b)	10 (c)(e)
Netherlands (t)	10 (b)(e)	10 (d)(e)

Country	Interest (%)	Royalty(%) (f)
New Zealand	10 (b)	10 (d)
Norway (h)	10	10 (c)
Oman	10 (b)	10 (c)
Philippines	15 (b)	10 (c)
Poland	15 (b)	10 (c)
Portugal	10 (b)	10 (d)
Qatar	10 (b)	10 (d)
Romania	15 (b)	10 (c)
Russian Federation	10 (b)	10 (d)
Saudi Arabia	10 (b)	10 (d)
Serbia	10 (b)	10 (d)
Singapore (u)	15 (b)	10 (d)(k)
Slovenia	10 (b)	10 (d)
South Africa	10 (b)	10 (d)
Spain	15 (b)	10 (c)(e)(k)
Sri Lanka	10 (b)	10 (d)
Sudan	10 (b)	10 (d)
Sweden	10 (b)(e)	10 (d)(e)
Switzerland (v)	10 (b)(e)	10 (d)(e)
Syria	10 (b)	10 (d)
Taiwan (w)	10 (b)	10 (d)
Tajikistan	10 (b)	10 (d)
Tanzania (k)	10	10 (d)
Thailand	20 (a)(b)	10 (c)
Trinidad and Tobago	10 (b)	10 (d)
Turkey	15 (b)	10 (c)
Turkmenistan	10 (b)	10 (d)
Uganda	10 (b)	10 (d)
Ukraine	10 (b)	10 (d)

Country	Interest (%)	Royalty(%) (f)
United Arab Emirates (x)	12.5 (b)	10 (d)
United Arab Republic	20 (a)	10 (c)
United Kingdom	15 (b)	10 (c)(k)
United States	15 (b)	10 (c)(k)
Uruguay (y)	10	10 (d)
Uzbekistan (z)	15 (b)	10 (c)
Vietnam	10 (b)	10 (d)
Zambia	10 (b)	10 (d)
Non-treaty countries	20 (a)	10 (c)

a. This rate is provided under the Indian Income Tax Act, 1961, in case of foreign companies, being the rate lower than that prescribed under the relevant tax treaty. This rate is increased by a surcharge of 2% (only where the aggregate income exceeds INR10m) and further enhanced by an education cess of 3% (on income-tax and surcharge). This rate applies to interest on monies borrowed, or debts incurred, in foreign currency. Other interest is taxed at the rate of 40% plus a surcharge of 2% (only where the aggregate income exceeds INR10m) and an education cess of 3% (on income-tax and surcharge).

b. A reduced rate of 0% to 10% applies generally to banks, and, in a few cases, to financial institutions local authorities, political subdivisions and the GoI. Further, exact scope of treaty may need to be verified.

c. This rate is provided under the Indian Income Tax Act, 1961, being the rate lower than that prescribed under the relevant tax treaty. This rate is increased by a surcharge of 2% (only where the aggregate income exceeds INR10m) and further enhanced by an education cess of 3% (on income tax and surcharge). It applies to royalties (not effectively connected to permanent establishment or fixed base in India) paid by an Indian Concern or GoI to foreign corporations under agreements that are approved by the GoI or are in accordance with the industrial policy, and those entered into after 31 May 2005. However, if the royalty is paid under an agreement, which is not approved by the Central Government or is not in accordance with the industrial policy, the royalty is taxed on a net basis at a rate of 40% plus a surcharge of 2% (only where the aggregate income exceeds INR10m) and an education cess of 3% (on income-tax and surcharge).

d. This rate is provided under the relevant tax treaty. It applies to royalty not effectively connected with a permanent establishment in India.

e. A more restrictive scope of the definition of royalty/interest may be available under the most favored nation clause in the relevant tax treaty.

f. Most of India's tax treaties also provide for withholding tax rates for technical services fees. In most cases, the rates applicable to royalties also apply to the technical services fees.

g. Article 11 of the India-Japan DTAA amended vide Notification dated 24 May 2012. Article 11 seeks to exempt interest income derived by certain specified institutions, which are wholly owned by the Government. Pursuant to this Notification, "international business unit of Japan Finance Corporation" has been omitted from the list and "Japan Bank for International Cooperation" has been added in the list of institutions specified in Article 11 of the DTAA.

h. The GoI signed a revised DTAA with the Kingdom of Norway on 2 February 2012. It provides for a reduced rate of 10% for interest as against 15% in the existing DTAA. The GoI has notified the DTAA with the Kingdom of Norway vide notification dated 19 June 2012. The agreement is effective from 1 April 2012.

i. A 10% rate applies to royalties relating to the use of industrial, commercial or scientific equipment and technical or consultancy services that are ancillary and subsidiary to the application or use of such equipment.

j. The GoI notified the DTAA with Government of Mozambique vide notification dated 31 May 2011. The agreement is effective from 1 April 2012.

k. The GoI signed a revised DTAA with United Republic of Tanzania on 27 May 2011. The GoI has notified the DTAA with the Government of Tanzania vide notification dated 21 February 2012. The agreement is effective from 1 April 2012.

l. The GoI signed a DTAA with the Federal Democratic Republic of Ethiopia on 25 May 2011. The text of the comprehensive agreement is still to be issued by both the countries. The above rates have been taken from the press release dated 27 May 2011. The effective date of the agreement will be known after the text of the treaty is released.

m. The GoI signed a DTAA with the Republic of Columbia on 13 May 2011. The text of the comprehensive agreement is still to be issued by both the countries. The above rates have been taken from the press release dated 13 May 2011. The effective date of the agreement will be known after the text of the treaty is released.

n. The GoI signed a DTAA with the Government of Georgia on 24 August 2011. The GoI has notified the DTAA with Government of Georgia vide notification dated 6 January 2012. The agreement is effective from 1 April 2012.

o. The GoI signed a Protocol amending the India-Australia DTAA on 16 December 2011, which provides for effective exchange of banking and tax information and assistance in the collection of revenue claims. Further, a Non-Discrimination Article has been introduced, the threshold limit for determining the Service Permanent Establishment has been increased and the “force of attraction” clause for taxing business profits has been eliminated. The effective date of the Protocol will be known after the text of the same is released. (Press release dated 16 December 2011)

p. The GoI signed a DTAA with the Republic of Estonia on 19 September 2011. The GoI has notified the DTAA with the Republic of Estonia vide notification dated 25 July 2012. The agreement is effective from 1 April 2013.

q. The GoI signed a DTAA with the Government of Lithuania on 26 July 2011. The GoI has notified the DTAA with the Government of Lithuania vide notification dated 25 July 2012. The agreement is effective from 1 April 2013.

r. It is reported that the GoI signed a revised DTAA with the Government of Malaysia on 9 May 2012. The text of the comprehensive agreement is still to be issued by both the countries. The effective date of the agreement will be known after the text of the treaty is released.

s. The GoI signed a revised DTAA with the Government of Nepal on 27 November 2011. The tax rate applicable on interest is reduced to 10%. The GoI has notified the DTAA with the Government of Nepal vide notification dated 12 June 2012. The agreement is effective from 1 April 2013.

t. The GoI signed a Protocol amending the India-Netherlands DTAA on 10 May 2012. The Protocol will replace the Article concerning Exchange of Information in the existing DTAA and will allow exchange of banking information as well as information without domestic interest. The effective date of the Protocol will be known after the text of the same is released. (Press release dated 25 May 2012)

u. The GoI signed a second Protocol amending the India-Singapore DTAA on 24 June 2011. The Protocol pertains to the exchange of information between India and Singapore in tax matters, including banking information, without domestic interest. The GoI has notified the Protocol with the Government of the Republic of Singapore vide notification dated 1 September 2011. The Protocol is effective retrospectively for taxable periods falling after 1 January 2008, i.e., Financial Year 2008-09.

v. The GoI signed a Protocol amending the India-Switzerland DTAA on 30 August 2010, which was notified vide notification dated 27 December 2011. This Protocol enhances the scope of exchange of information, without domestic interest, between the two countries.

The erstwhile MFN clause is also amended to apply automatically when a reduced rate of tax is granted with respect to dividend, interest, royalty and fees for technical services, to an OECD country. Further the definition of "resident" has been amended to include a recognized pension fund or pension scheme. Also, an anti-abuse provision has been introduced. The Protocol is effective from 1 April 2012.

w. The GoI notified the DTAA between the India-Taipei Association in Taipei and the Taipei Economic and Cultural Centre in New Delhi vide notification dated 2 September 2011. The agreement is effective from 1 April 2012.

x. It is reported that a Protocol amending the India-UAE DTAA been signed on 16 April 2012. The notification to make the agreement effective is still to be issued by the GoI.

y. The GoI signed a DTAA with the Oriental Republic of Uruguay on 8 September 2011. The text of the comprehensive agreement is still to be issued by both the countries. The above rates have been taken from the press release dated 8 September 2011. The effective date of the agreement will be known after the text of the treaty is released.

z. It is reported that a Protocol amending the India-Uzbekistan DTAA signed on 11 April 2012. The notification for making the agreement effective is still to be issued by the GoI.

aa. The GoI signed a revised DTAA with the Government of Indonesia on 27 July 2012. The notification for making the agreement effective is still to be issued by the GoI. (Press release dated 31 July 2012).

Tax Information Exchange Agreements (TIEA) entered by India

To exercise the powers conferred by Explanation 2 to section 90 of the Income Tax Act, 1961 the GoI has notified certain territories outside India as "specified territory" for the purposes of the said section. This enables the GoI to initiate and negotiate agreements for exchange of information for the prevention of evasion or avoidance of income tax and assistance in collection of income tax with these specified territories.

Following are the TIEA's signed by the GoI:

i. India has entered a Tax Information Exchange Agreement (TIEA) with Bahamas. The agreement is effective from 1 April 2011. The agreement provides for sharing of information, including exchange of banking and ownership information. (Notification dated 13 May 2011).

ii. India has entered a TIEA with British Virgin Islands on 9 February 2011. The agreement is effective from 22 August 2011. The agreement provides for sharing of information, including exchange of banking and ownership information, and also of past information in criminal tax matters. (Notification dated 3 October 2011).

iii. India has entered a TIEA with Bermuda. The agreement is based on international standards of transparency and exchange of information and also permits exchange of past information in criminal tax matters. With respect to criminal tax matters, the agreement is effective from 3 November 2010. With respect to all other matters, the agreement is effective from 1 April 2011. (Notification dated 24 January 2011).

iv. India has entered a TIEA with Isle of Man. The information relates to determination, assessment and collection of taxes, recovery and enforcement of tax claims or investigation or prosecution of matters. With respect to criminal tax matters, the agreement is effective from 17 March 2011. With respect to all other matters, the agreement is effective from 1 April 2011. (Notification dated 13 May 2011).

v. India has entered a TIEA with Cayman Islands on 21 March 2011. The agreement is effective from 8 November 2011. The agreement provides for sharing of information, including exchange of banking and ownership information. (Notification dated 27 December 2011).

vi. 6) It is reported that India has entered a TIEA with Argentina on 21 November 2011. The agreement provides for sharing of information, including exchange of banking and ownership information. The notification for making the agreement effective is still to be issued by the GoI.

vii. India has entered a TIEA with the Government of the Kingdom of Bahrain on 31 May 2012. The agreement provides for sharing of information, including exchange of banking information. The notification for making the agreement effective is still to be issued by the GoI. (Press release dated 1 June 2012)

viii. It is reported that India has entered a TIEA with Guernsey on 20 December 2011. The agreement provides for sharing of information, including exchange of banking, ownership and investment information, and also of past information in criminal tax matters. The notification for making the agreement effective is still to be issued by the GoI.

ix. India has entered a TIEA with Jersey on 3 November 2011. The agreement is effective from 8 May 2012. The agreement provides for sharing of information, including exchange of banking and ownership information. (Notification dated 10 July 2012).

x. It is reported that India has entered a TIEA with Liberia on 3 October 2011. The notification for making the agreement effective is still to be issued by the GoI.

xi. It is reported that India has entered a TIEA with Macau on 3 January 2012. The agreement provides for sharing of information, including exchange of banking and ownership information. The notification for making the agreement effective is still to be issued by the GoI.

xii. India has entered a TIEA with Monaco on 31 July 2012. The agreement provides for sharing of information, including exchange of banking and ownership information. The notification for making the agreement effective is still to be issued by the GoI (Press Release dated 1 August 2012).

Other recent developments from standpoint of international taxation

i. India has entered its first multi-lateral agreement (MA) with the South Asian Association for Regional Cooperation (SAARC) nations comprising Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka. This is a limited MA on avoidance of double taxation and mutual administrative assistance in tax matters with a view to promote economic cooperation among its member states. The MA was signed on 13 November 2005 and came into force from 19 May 2010. In India, the MA is effective from 1 April 2011 and applies in respect of income derived in the tax year beginning from 1 April 2011 and the subsequent years. The MA provides taxation rules in the hands of professors, teachers and students who are residents of a member state with respect to income earned in another member state. The MA also has provisions on exchange of information, assistance in collection of taxes, training sessions for tax administrators, sharing of tax policies and such other related issues aimed at tax cooperation among member states.

ii. The GoI signed a mutual agreement with the Swiss Confederation on 20 April 2012 for liberal interpretation of the identity requirements to provide information according to Article 26 of the DTAA. According to the aforesaid agreement, it has now been agreed that it would be sufficient if the requesting country indicates to the extent known, the name and address of any person believed to be in possession of the requested information.

iii. India has signed a Multilateral Convention on Mutual Administrative Assistance in Tax Matters. By signing the Convention, India becomes the first non-OECD, non-Council of Europe country to become a party to the convention. The Convention provides for exchange of information, simultaneous tax examinations, tax examinations abroad, assistance in recovery and measures of conservancy and service of documents. It can also facilitate joint audits and covers all taxes other than customs duties. Under the Convention, the national law rights and safeguards, that limit obligations to provide assistance, still apply. The Convention also imposes a number of safeguards to protect the confidentiality of the information exchanged. Signing countries are also free to make reservations regarding the taxes covered and the type of assistance to be provided. The Convention facilitates international cooperation for a better operation of Indian tax laws, while respecting the fundamental rights of taxpayers.

iv. According to the Finance Act 2012, section 90 of the Income Tax Act, 1961 has been amended, whereby a non-resident shall not be entitled to claim relief under the DTAA unless a Tax Residency Certificate (TRC) in the prescribed form is furnished. Further furnishing of TRC is not a conclusive evidence to avail treaty benefits.

Section 95 of the Income Tax Act, 1961, as effective from 1 April 2013, provides for General Anti Avoidance Rules (GAAR), which seeks to override treaty, if one of the main purposes of an arrangement is to obtain a tax benefit. GAAR is an anti abuse provision.

App. 7: Tax calculations

Appendix 7.1:
Individual Income Tax calculation

The following example illustrates the method of calculating taxable income and Income Tax liability of an individual for the tax year 1 April 2012 to 31 March 2013.

Calculation of taxable Income		
Salary and perquisites		430,000
Income from self-occupied property		0
Less: interest paid on construction loan		
(limited to RS.150,000)		150,000
Capital gains (longterm on sale of property)		30,000
Interest income		20,000
Gross total income		**330,000**
Deductions allowable from the taxable Income:		60,000
Medical insurance,	10,000	
Investments in: (a)		
▸ Provident fund	20,000	
▸ Life insurance	10,000	
▸ Other tax saving investments	20,000	
Taxable income (b)		**270,000***
Calculation of tax liability		
Ordinary taxable income at rates from the personal income tax rate table		
[(240,000-200,000)] x 10%] (c)		4,000
Capital gains (long term of 30,000 x 20%)		6,000
Total tax liability		10,000
Education cess @ 3%		300
Less:		(10,300)
Taxes withheld on salary	4,120	
Advance tax payment	6,180	
Balance tax payable while filing of Return of Income		0

a. Contributions/investments in the tax savings plan will be allowed as deduction from gross total income up to INR100,000
b. Taxable income consists of long-term capital gains (INR30,000) on sale of property
c. In the case of a resident senior citizen and resident very senior citizen, the minimum taxable income threshold is INR250,000 and INR500,000 respectively, as against INR200,000 for any other individual.
d. The limit is applicable in case of self occupied house property. In case of let out property, actual interest payable is deductible

Appendix 7.2: Taxability of income items

Compensation	Taxable	NonTaxable	Comments
Base salary	X	-	(a)
Bonus	X	-	(a)
Cost-of-living allowance	X	-	(a)
Tax perquisite (employee's obligation of tax born by employer)	-	-	(b)
Rent-free housing	X	-	(c)
Utilities	X	-	(a)
Children education reimbursement	X	-	(a)
Hardship allowance	-	-	(a)
Entertainment allowance	X	-	(a)
Other allowance	X	-	(a)
Moving expenses	X	-	(d)
Medical reimbursement	X	-	(e)
Value of meals provided during working hours	-	X	(f)
Other Items			
Foreign-source personal ordinary income (interest and dividends)	-	XXX	(e)
Capital gain from sale of personal residence in home country	-	XXX	(f)
Capital gains from sale of other assets in home country (stocks and shares)	-	X	(g)

a. Compensation (including value of perquisites) paid for services performed in India is taxable in India, regardless of where the compensation is paid. Remuneration includes any salary payable to the employee for a rest or leave period, which is preceded or followed by the performance of services in India and is provided for in the employment contract.

b. Tax paid by the employer is subject to multiple gross-up in the hands of the employee. However, tax paid on non-monetary benefits provided to an employee can be claimed as exempt, subject to the satisfaction of certain conditions.
c. The taxable value of a perquisite with respect to rent-free housing is calculated using a prescribed formula.
d. Moving expenses incurred at the time of transfer are not taxable to the employee, subject to the satisfaction of certain conditions.
e. Medical expenditures or reimbursements are exempt, subject to certain conditions and limits.
f. This item is not taxable, subject to satisfaction of certain conditions.
g. These items are non taxable for individuals who are considered resident and not ordinarily resident or who are considered non resident, provided these are not received in or directly remitted to India.

Appendix 7.3: Sample tax calculation

The following is a tax calculation for an expatriate who was sent to India on 1 April 2012 for a period of two years. The calculation reflects the tax rates for the year ending 31 March 2013.

Computation of Taxable Income (In US$)

Basic salary	120,000	
Bonus	12,000	
Employer pension contribution to home country plan (perquisite) (a)	8,400	
Children education allowance (after exemption)	12,000	
Cost of living allowance	24,000	
Foreign-service premium	30,000	
Housing utilities(perquisite value)	**1,200**	
Total of salary, bonus and taxable allowances		**207,600**
Perquisite (b):		
Rent paid by employer for unfurnished housing (lower of amount paid of US$36,000 or 15% of salary, bonus and taxable allowances, i.e., US$198,000 which equals US$29,700) Taxable perquisite		29,700
Taxable income		237,300
Taxable income in Indian currency (US$237,300 X 55.13) (c)		13,082,349
Calculation of tax payable		
Income tax		3,754,705
Education cess at 3%		112,641
Total tax payable		**3,867,346**

a. Employer contributions to a home country plan can be claimed as non-taxable based on judicial precedents.

   In case, employee's share of Indian Provident Fund contribution is paid by the employer, the same will be taxable in the hands of employee.

b. For the purpose of computing the value of accommodation, it has been assumed that the accommodation is being provided in a city with population exceeding 1,000,000 (according to 2001 census).

c. For the purpose of the example, the conversion rate is US$1 = INR 55.13

Compliance calendar for the period 1 April 2012 to 31 March 2013

Date of compliance	Particulars
April 2012	
10 April 2012	Electronic filing of excise return for the month of March 2012
25 April 2012	Electronic filing of Service tax return for the period 1 October 2011 to 31 March 2012
30 April 2012	E-payment of taxes withheld in March 2012
May 2012	
5 May 2012	Payment of excise and service tax liability for the month of April 2012 (other than e-payment)
6 May 2012	E-payment of excise and service tax liability for the month of April 2012
7 May 2012	E-payment of taxes withheld in April 2012
10 May 2012	Electronic filing of excise return for the month of April 2012
15 May 2012	Electronically file quarterly (Jan 2012 to Mar 2012) withholding tax returns in Form 24Q/26Q/27Q
June 2012	
5 June 2012	Payment of excise and service tax liability for the month of May 2012 other than e-payment
6 June 2012	E-payment of excise and service tax liability for the month of May 2012
7 June 2012	E-payment of taxes withheld in May 2012
10 June 2012	Electronic filing of excise return for the month of May 2012
15 June 2012	E-payment of advance tax (15% of the estimated tax for tax year 2012-13)
30 June 2012	Final adjustment of amount paid, if any, on a monthly basis under Rule 6(3)(ii) of Cenvat Credit Rules, 2004

Date of compliance	Particulars
July 2012	
5 July 2012	Payment of excise and service tax liability for the month of June 2012 (other than e-payment)
6 July 2012	E-payment of excise and service tax liability for the month of June 2012
7 July 2012	E-payment of taxes withheld in June 2012
10 July 2012	Electronic filing of excise return for the month of June 2012
15 July 2012	Electronically file quarterly (April 2012 to June 2012) withholding tax returns in Form 24Q/26Q/27Q
August 2012	
5 August 2012	Payment of excise and service tax liability for the month of July 2012 (other than e-payment)
6 August 2012	E-payment of excise and service tax liability for the month of July 2012
7 August 2012	E-payment of taxes withheld in July 2012
10 August 2012	Electronic filing of excise return for the month of July 2012
31 August 2012	File personal income-tax/wealth tax returns for tax year 2011-12 (extended from 31 July under special circumstances)
September 2012	
5 September 2012	Payment of excise and service tax liability for the month of August 2012 (other than e-payment)
6 September 2012	E-payment of excise and service tax liability for the month of August 2012
7 September 2012	E-payment of taxes withheld in August 2012
10 September 2012	Electronic filing of excise return for the month of August 2012
15 September 2012	E-payment of advance tax (45% of the estimated tax for tax year 2012-13)
30 September 2012	Electronic filing of corporate income-tax [non-transfer pricing (TP) cases]/wealth tax returns
30 September 2012	Last date for furnishing annual statement for tax year 2011-12 by a NR having Liaison Office in India (extended from 30 May 2012)

Date of compliance	Particulars
October 2012	
5 October 2012	Payment of excise and service tax liability for the month of September 2012 (other than e-payment)
6 October 2012	E-payment of excise and service tax liability for the month of September 2012
7 October 2012	E-payment of taxes withheld in September 2012
10 October 2012	Electronic filing of excise return for the month of September 2012
15 October 2012	Electronically file quarterly (July 2012 to Sept 2012) withholding tax returns in Forms 24Q/26Q/27Q
25 October 2012	Electronic filing of Service tax return for the period 1 April 2012 to 30 September 2012

November 2012	
5 November 2012	Payment of excise and service tax liability for the month of October 2012 (other than e-payment)
6 November 2012	E-payment of excise and service tax liability for the month of October 2012
7 November 2012	E-payment of taxes withheld in October 2012
10 November 2012	Electronic filing of excise return for the month of October 2012
30 November 2012	Electronic filing of corporate income-tax return and wealth tax return in cases requiring TP (including SDT) compliance
30 November 2012	Filing of Chartered Accountant Certificate (in form 3CEB) for transfer pricing compliance.

December 2012	
5 December 2012	Payment of excise and service tax liability for the month of November 2012 (other than e-payment)
6 December 2012	E-payment of excise and service tax liability for the month of November 2012
7 December 2012	E-payment of taxes withheld in November 2012
10 December 2012	Electronic filing of excise return for the month of November 2012
15 December 2012	E-payment of advance tax (75% of the estimated tax for tax year 2012-13)

Date of compliance	Particulars
January 2013	
5 January 2013	Payment of excise and service tax liability for the month of December 2012 (other than e-payment)
6 January 2013	E-payment of excise and service tax liability for the month of December 2012
7 January 2013	E-payment of taxes withheld in December 2012
10 January 2013	Electronic filing of excise return for the month of December 2012
15 January 2013	Electronically file quarterly (Oct 2012 to Dec 2012) withholding tax returns in Forms 24Q/26Q/27Q
February 2013	
5 February 2013	Payment of excise and service tax liability for the month of January 2013 (other than e-payment)
6 February 2013	E-payment of excise and service tax liability for the month of January 2013
7 February 2013	E-payment of taxes withheld in January 2013
10 February 2013	Electronic filing of excise return for the month of January 2013
March 2013	
5 March 2013	Payment of excise and service tax liability for the month of February 2013 (other than e-payment)
6 March 2013	E-payment of excise and service tax liability for the month of February 2013
7 March 2013	E-payment of taxes withheld in February 2013
10 March 2013	Electronic filing of excise return for the month of February 2013
15 March 2013	E-payment of advance tax (100% of the estimated tax for tax year 2012-13)
31 March 2013	Payment of excise and service tax liability for the month of March 2013 (including e-payment)
31 March 2013	Last day for e-payment of advance tax (tax year 2012-13)

- The calendar captures only key compliance dates on central levied key indirect taxes and hence, does not include dates for filing of revised return for service tax and due dates for filing of refund applications or replies to notices and appeals or any situation specific dates.
- The calendar captures only key compliance dates on direct taxes for corporate taxpayers and hence does not include dates for issue of withholding tax certificates in Form 16/16A, dates for submission of returns for taxes collected at source, compliance dates for non-corporate taxpayers etc. In general, the annual Form 16 needs to be issued by the taxpayer before 31 May 2012 for taxes withheld on salary in the tax year 2011–2012, whereas in case of other tax withholdings, Form 16A will need to be issued within 15 days from the due date of furnishing of the quarterly tax withholding return.
- Further, dividend distribution tax should be paid within a period of 14 days from the date of declaration, distribution or payment, whichever is earlier.

Notes

Notes

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