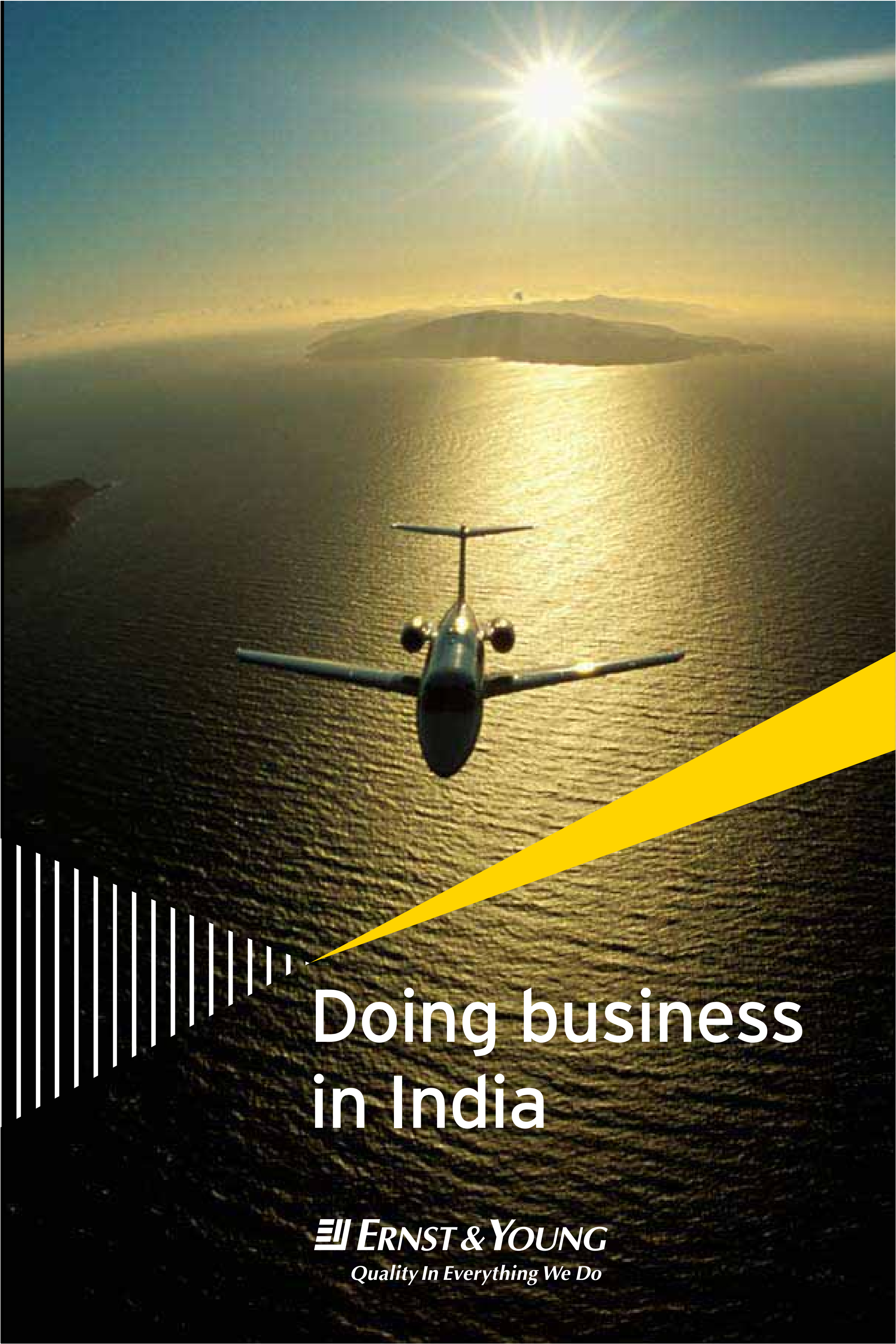


Doing business in India

ERNST & YOUNG

Quality In Everything We Do

This publication should be used as a research tool only, and the information given should not serve to substitute for the tax professional's own research with respect to client matters.

This book is one in a series of country profiles prepared for use by clients and professional staff. Additional copies may be obtained from:

Ernst & Young Private Limited
Golf View Corporate Tower B,
Sector-42, Sector Road,
Gurgaon, Haryana,
India
Tel No.: +91-124-464 4000
Facsimile: +91-124-464 4050

Contents

Preface

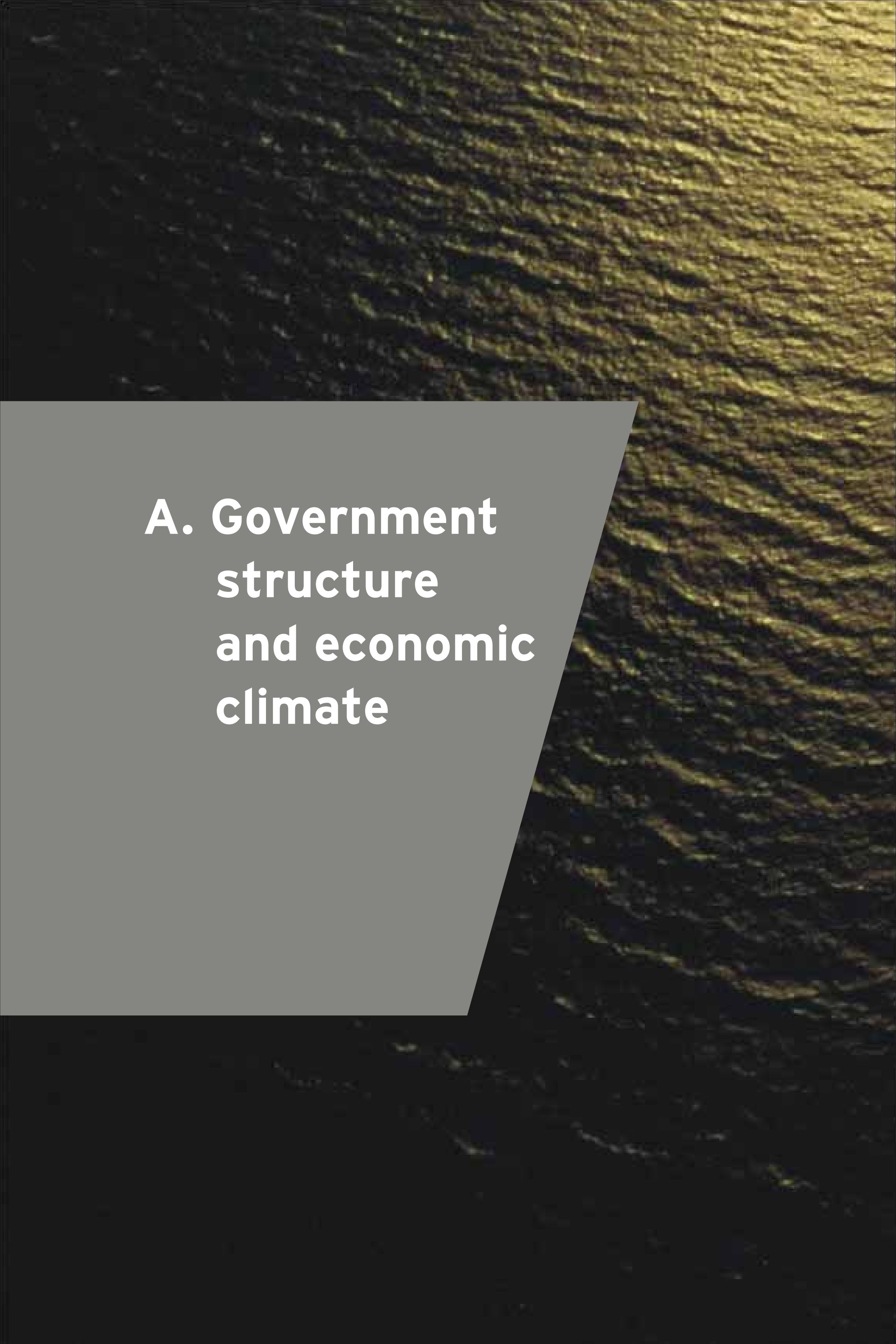
This book was prepared by Ernst & Young, India with the intention of giving busy executives a quick overview of the investment climate, taxation, forms of business organisations, and business and accounting practices in India. The complex decision-making process involved in undertaking foreign operations requires an intimate knowledge of a country's commercial climate, along with a realisation that the climate is constantly evolving. Companies doing business in India, or planning to do so, are well-advised to obtain current and detailed information from experienced professionals. The information presented in the book is validated w.e.f. 31 December 2007.

List of frequently used abbreviations

ADR	American Depository Receipt
BCTT	Banking Cash Transaction Tax
BPO	Business Process Outsourcing
BTP	Biotechnology Park
CAGR	Compounded Annual Growth Rate
CBDT	Central Board of Direct Taxes
CCI	Competition Commission of India
DDT	Dividend Distribution Tax
EHTP	Electronic Hardware Technology Park
EOU	Export Oriented Unit
EPZ	Export Processing Zone
FBT	Fringe Benefit Tax
FCCB	Foreign Currency Convertible Bond
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIPB	Foreign Investment Promotion Board
FTP	Foreign Trade Policy
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDR	Global Depository Receipt
HTP	Hardware Technology Park
IRDA	Insurance Regulatory and Development Authority
IT	Information Technology
ITA	Information Technology Agreement
ITES	IT Enabled Services

List of frequently used abbreviations

MNC	Multinational Corporation
MoF	Ministry of Finance
MoP	Ministry of Power
MoPNG	Ministry of Petroleum and Natural Gas
NBFC	Non-Banking Financial Company
NELP	National Exploration License Policy
NHPC	National Hydel Power Corporation
NPC	Nuclear Power Corporation
NRIs	Non-resident Indians
NTPC	National Thermal Power Corporation
PIO	Person of Indian Origin
PSB	Public Sector Bank
PSU	Public Sector Unit
RBI	Reserve Bank of India
Rs	Indian Rupee
SDR	Special Drawing Rights
SEBI	Securities and Exchange Board of India
SEZA	Special Economic Zones Act, 2005
SEZ	Special Economic Zone
STP	Software Technology Park
STT	Securities Transaction Tax
TRAI	The Telecom Regulatory Authority of India
VAT	Value Added Tax
WTO	World Trade Organisation
y-o-y	Year on year



A. Government structure and economic climate

Introduction

Basic statistics

Land area: 3.29 million square kilometres
Capital: New Delhi
Population: 1.122 billion (estimated as of 1 October 2006)
Languages spoken: 18 principal languages; majority speak Hindi; business language: English
International airports: Ahmedabad, Amritsar, Bangalore, Chennai, Dabolim, Guwahati, Hyderabad, Kochi, Kolkata, Mangalore, Mumbai, Nagpur, New Delhi, Srinagar, and Thiruvananthapuram
Major seaports: Chennai, Ennore, Haldia, Jawaharlal Nehru, Kandla, Kochi, Kolkata, Mormugao, Mumbai, New Mangalore, Paradip, Tuticorin, and Visakhapatnam

The land

Spread over three million square kilometres and located entirely in the northern hemisphere, India is the seventh largest country in the world in terms of geographical size. India's neighbours are Bangladesh and Myanmar in the east; Bhutan, China and Nepal in the north; Pakistan in the west, and Sri Lanka in the south.

The people

Population

As per the last census carried out in 2001, India had a population of approximately 1.029 billion. Based on historical growth rates, the population as of 1 October 2006 was an estimated 1.122 billion, and the country is expected to overtake China and become the most populous nation by 2045.

Language

Given its cultural diversity, scores of languages and dialects are spoken in the country. Of these, 22 languages are recognised in the Indian Constitution, which include Bangla, Gujarati, Hindi, Kannada, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu, and Urdu. Hindi, written in the Devanagari script, is the national language, while English is the business language.

Religion

As India is a secular country, it does not advocate any one religion, and all religions are accorded equal status before the law. The various religions practiced in the country are Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, Judaism, and Zoroastrianism.

Education

India has over one million schools and approximately 9,200 colleges in general fields, 4,600 colleges in professional fields, while 300 universities/ institutions are considered of national importance. There are a large number of private and Government or municipal corporation-run schools in the urban areas. However, in the rural areas, education is imparted largely by Government-run schools. Professional educational institutes, with a combined intake of over half a million students per annum, constantly add to the country's large pool of skilled English-speaking work force, which is a tremendous competitive advantage vis-à-vis other nations.

Cost of living

India offers the advantage of a low cost of living, relative to American and European countries. The cost of living varies by type of location (urban/rural) and size of location (small/large/metro).

Travel

Most parts of the country are well connected by air, rail, and road transport. For domestic air travel, there are a number of regular airlines—Indian, Jet Airways, and Kingfisher Airlines—as well as budget airlines for inexpensive air travel—Deccan, JetLite, Spice Jet, IndiGo, GoAir, and Paramount. Nearly every major international airline operates flights to and from the country. The country also has an extensive rail and road transport network. Railway services are offered by the Government-owned Indian Railways. Bus services (regular, deluxe, and luxury) over shorter distances are provided by Government agencies and private operators. Numerous car rental agencies offer cars for hire and public taxis are available in large cities.

Tourism

Tourism is in a high-growth phase in the country. Foreign tourist arrivals, comprising business and leisure travellers, increased by 13% y-o-y in 2006 to 4.4 million, and by 12.3% y-o-y in the first nine months of 2007 to 3.4 million. The country's earnings from tourism grew by 14.6% to USD 6.6 billion in 2006, and by 25.6% to USD 5.6 billion in the first nine months of 2007, on a y-o-y basis. With rising foreign investment interest in India, the business travel segment is expected to witness rapid growth.

Besides the Indian Tourism Development Corporation (ITDC), which is run by the Central Government, each state has its own tourism development corporation.

Time zone

India is five and one-half hours ahead of the Greenwich Mean Time. It has not adopted daylight saving time, and uses standard time countrywide throughout the year.

Business hours

Normal business hours are from 9:00 am to 6:00 pm, Monday through Friday. Some commercial establishments also work on Saturdays. Banking hours are usually from 9:00 am to 3:00 pm; although some banks have branches open till 8:00 pm. Shops are usually open till 9:00 pm six days a week. Sunday is the weekly holiday, although this can vary from place to place for various markets.

Public holidays

Public holidays are announced by the Central Government and by individual State Governments. There are three national holidays—Republic Day (26 January), Independence Day (15 August), and Gandhi Jayanti (2 October). In addition, there are several holidays for festivals, the dates of which change from year to year.

A. Government structure and economic climate

A.1 Government structure

Government

As enshrined in its Constitution, India is a sovereign, socialist, secular, democratic republic. It comprises 29 states and six union territories. Each state is administered by a state

Government, while the Central Government is in charge of the overall administration of the country. The union territories are administered by representatives nominated by the Central Government.

India follows a parliamentary form of Government. Even though the President is the Head of the Republic, the real powers are vested in the Prime Minister, who is the elected representative of the people. The Government has three branches—legislature, executive, and judiciary.

The Legislature

At the central level, India has a bicameral legislature. The Union Parliament comprises the Lok Sabha (House of the People or the Lower House) and the Rajya Sabha (Council of the states or the Upper House). The Members of the Lok Sabha are directly elected by the people of the country, while the members of the Rajya Sabha are indirectly elected i.e. they are voted for by the elected representatives of the people of states & union territories.

At the state level, some states have a unicameral legislature (Legislative Assembly), while some have a bicameral legislature (Legislative Assembly and Legislative Council). The members of the Legislative Assembly of a state are directly elected by the people of the state.

The Election Commission is an independent body with the mandate to oversee the election process to ensure free and fair elections at the central and the state levels.

The Executive

The leader of the majority party in the Lok Sabha usually becomes the Prime Minister of the country. The Prime Minister and the Council of Ministers, collectively called the Union Cabinet, are vested with the responsibility of running the day-to-day affairs of the Central Government. The past few Governments in the country have been coalition Governments, with no single political party securing absolute majority in the Lok Sabha.

Similarly, at the state level, the leader of the majority party in the Legislative Assembly becomes the Chief Minister of the state. The Chief Minister, along with his Council of Ministers (together called the state Cabinet), are responsible for the day-to-day affairs of the State Government.

The Judiciary

India has an independent judicial system. The Supreme Court is the apex judicial authority, followed by the High Courts, which head the judicial system in each state. Under each High Court, there is a hierarchy of subordinate courts (district level and lower).

Political Parties

India has numerous political parties, including national, regional, and local parties. The major national parties are the Congress (I), the Bhartiya Janata Party (BJP), the Communist Party of India (CPI), the Communist Party of India—Marxist (CPM), and the Janata Dal (JD).

A.2 Financial system

Reserve Bank of India

The Reserve Bank of India (RBI), established in 1935, is the central bank of the country. It has a four-fold role to:

- Regulate and supervise the Indian financial system;
- Formulate, implement, and monitor the monetary policy of the country;
- Manage the country's foreign exchange reserves and prescribe exchange control norms to facilitate external trade and payment; and
- Act as banker to the Central and State Governments

RBI, through its policies, directives, and guidelines, has been placing increasing emphasis on the monitoring of, and provisioning for non-performing assets, capital adequacy, and risk management.

Types of institutions

The banking system in India comprises scheduled commercial banks, urban and state cooperative banks, and regional rural banks. Scheduled commercial banks, in turn, can be categorised into public sector banks, private sector banks, and foreign banks. Besides banks, another segment of players in the Indian financial system, are non-banking financial companies (NBFCs).

Public sector banks

This segment comprises 28 banks, including the State Bank of India and its seven subsidiary banks. It is the dominant segment in the banking industry. The Central Government is the majority shareholder, holding more than 51% equity stake in all the public sector banks, although its shareholding has decreased over the years on account of public offerings of shares and return of equity capital to the Government by these banks.

Private sector banks

This segment comprises 28 banks, including seven new private sector banks and 21 old private sector banks. The new private sector banks are growing rapidly in size. The last couple of years have witnessed some mergers and acquisitions in this segment, and this trend is expected to gain in strength in the years to come. The RBI has placed restrictions on shareholding in private sector banks and no shareholder can hold more than 5% shareholding in a private sector bank.

Foreign banks

This segment comprises 29 banks, including most of the leading international banks, although their presence is restricted to the metropolitan and large cities. Currently, there are several restrictions on foreign banks with respect to the expansion of branch network, location of new branches, and acquisition of shareholding in Indian banks. However, recently, RBI has come out with a road map for deregulation of foreign banks, whereby, from 2009, a foreign bank would be on par with an Indian bank, and can freely compete with other Indian banks as well as carry out mergers and acquisitions.

Cooperative banks and regional rural banks

Cooperative banks cater to the credit needs of specific communities or groups of people in a region, and operate in both urban and rural areas. They have been established under the respective State Co-operative Societies Act, and are administered by the state authorities, although their banking activities come within the purview of RBI. Regional rural banks were established under an act of the Parliament with a view to improving credit delivery in rural areas.

Non-Banking Financial Institutions (NBFIs)

NBFIs offer enhanced equity and risk-based products. They play a crucial role in broadening access to financial services, diversifying the existing product portfolios, and enhancing competition in the financial sector. The NBFI segment comprises all-India financial institutions, state-level financial institutions, NBFCs, and primary dealers. The first two are Government-owned and focus on long-term development financing; NBFCs are mostly private sector entities that provide niche financial services; while primary dealers play an important role in the primary and secondary Government securities market.

A.3 Type of economy

The year 1991 witnessed a spate of economic reforms, including delicensing of most industries, deregulation of industries earlier monopolised by the public sector, and liberalisation of foreign trade through a steady reduction in tariffs. The relaxation of foreign investment limits in nearly all Indian industries has been an impetus to the inflow of Foreign Direct Investment (FDI) into the country. These measures have had far-reaching consequences and today, India has a strong, vibrant, and fast-growing economy, which is rapidly integrating with the global economy. According to the Goldman Sachs BRIC report, India is forecast to become the third largest economy in the world, after China and the US, by the year 2050, overtaking all other developed economies.

There are various factors that have led numerous multi-national corporations (MNCs) to not only establish operations in India but also to consider it among their key markets. The country's key strengths in this respect include:

- a dynamic and competitive private sector that accounts for over 75% of the country's GDP and offers considerable scope for collaborations
- a sound and independent legal system
- a large and growing consumer market; and
- a vast pool of English-speaking and skilled managerial and technical manpower that matches, if not surpasses, the best in the world.

General economic trends

Key economic indicators

The economy continued to grow at a rapid pace in 2006–07, with real GDP growing by 9.4% y-o-y during the fiscal year, an increase from 9.0% y-o-y in 2005–06. With this, the economy has clocked an average growth of 8.6% in real GDP over the past four fiscal years. With the agriculture sector growing by only 2.7% y-o-y in 2006–07, accelerated growth of the industry and services sectors (10.9% and 11.0%, respectively) were the principal drivers of economic growth.

The economy is expected to maintain the growth momentum in the current year (real GDP growth in the first quarter was 9.3%). As per the latest forecast of the Centre for Monitoring Indian Economy, real GDP growth for the full year is expected to be 9.1% y-o-y, with the agriculture, industry, and services sectors expected to grow by 3.9%, 9.5%, and 10.7%, respectively.

The country's foreign currency reserves, excluding gold and Special Drawing Rights (SDRs), have demonstrated sustained growth, from USD 135 billion at the end of 2005 to over USD 273 billion as of 11 January 2008. The principal factors responsible for this reserve accretion are the country's burgeoning services exports and strong capital inflows comprising FDI and foreign portfolio investments by foreign institutional investors (FIIs).

The Indian rupee (INR or Rs.) has appreciated significantly against the US dollar over the past few years. The INR–USD exchange rate, which stood at 48.8 on 31 March 2002 currently rules at 39.3 (10 January 2008)[1].

Inflation, measured on a weekly basis by the Wholesale Price Index, ruled higher at 5.4% on an average during 2006–07, as against 4.4% in 2005–06, primarily owing to a surge in international crude prices and strong growth in domestic demand for credit. It has come down a tad, to an average of 4.75%, in the first half of the current year, on account of the tight monetary policy initiatives of the RBI. As a result, interest rates ruled higher in 2006–07 as compared with the previous year. The maximum prime lending rate (PLR) of banks was 12.5% in 2006–07 as compared with 10.8% in the previous year, and has moved up further to 13.3% in the first half of the current year.

The market

Consumer market

India's growing consumer market is one of the chief attractions for multinational consumer product companies. Steadily increasing urbanisation and explosive growth of the electronic media have brought about sweeping changes in the lifestyles and consumption attitudes of people. The easy availability of consumer

[1]For detailed information on the Indian currency, please refer to the note on 'Currency' in the following section

finance has served to fuel this boom in consumerism. These factors have generated a growing demand for a variety of quality products and services, including convenience foods, branded apparel, automobiles, toys, home appliances, electronic goods, restaurants, travel, communication, and entertainment.

In rural areas, the electronic media has played a strategic role in enabling consumer product companies to create awareness about their branded products, which has caused a shift in consumption from unbranded and traditional products to branded alternatives. Besides, the composition of the consumption basket has also changed, with the share of food items decreasing in favour of non-food products. While urban areas have multiple retail outlets ranging from small mom-and-pop stores to large supermarkets, the villages are catered to by small shops.

Industrial market

The industrial market is an equally large and diverse market comprising a wide range of products for industrial consumption. While the majority of requirements are met domestically, some of these products are imported. A significant quantum of production in certain industries is also exported. Recognising India's cost advantages and technical expertise in manufacturing, several MNCs have begun to use the country as a manufacturing base to outsource their regional or global product requirements. During the last four fiscal years, industrial production (measured by Index of Industrial Production) grew at an average of nearly 8.8% per annum. In the current fiscal, it is expected to grow by 9.5%.

Currency

India's monetary unit is the Indian rupee (INR or Rs). Only the Central Government is empowered to legislate on matters related to currency and coinage, and RBI is the sole authority empowered to issue currency. RBI notes are fully backed by approved security, including bullion, foreign securities, rupee coins, and rupee securities of the Government.

A rupee is divided into 100 paise. The denominations of currency notes and coins presently used are Rs 1,000, Rs 500, Rs 100, Rs 50, Rs 20, Rs 10, Rs 5, Rs 2, Re 1 and 50 paise.

As the rupee is not freely convertible into foreign currency, foreign exchange transactions are carried out through entities authorised by the RBI to deal in foreign exchange or foreign securities, i.e. an authorised moneychanger or an offshore banking unit. A person may purchase foreign exchange from an authorised dealer by providing a declaration of the intended use of the foreign exchange. Usage of foreign exchange for purposes other than that declared would lead to contravention of the Foreign Exchange Management Act, 1999 (FEMA).

A.4 Leading industries

Since the commencement of economic reforms in 1991, successive Governments have implemented strong measures to liberalise the business environment and boost industrial growth. The elimination of licensing requirements for all but six industries has ushered in an era of competition and imparted dynamism to the industry.

Substantial reduction in import tariffs on raw materials and intermediate products, coupled with the rationalisation of excise duties, have eased access to inputs and reduced costs.

Forward-looking export-import policies have enhanced the competitiveness of the country's exports, and created an environment conducive to their rapid growth. In order to enable the industry to imbibe state-of-the-art technology and global best practices, the Government has been welcoming FDI and foreign collaborations. The FDI limits in almost all industries have been progressively liberalised and approval procedures simplified. With liberalisation, FDI in a large number of industries is permitted upto 100% automatically, without any approvals. FDI in sectors, including telecom, real estate, and retail, among others is permitted, but subject to certain restrictions.

Oil and natural gas

India is the world's fifth largest consumer of primary energy. Primary energy consumption grew at a CAGR of 4.6% between 1996 and 2006, as compared with a global average of 2.1%. India's primary energy requirement is expected to more than double over the next two decades. Oil and gas currently accounts for 36% of the primary commercial energy consumption, and its share is projected to increase marginally over the next two decades.

During the last decade, the demand for oil and gas has risen sharply (grew at a CAGR of 4% and 6.8%, respectively during 1996–2006). This has resulted in increasing reliance on crude imports for meeting domestic demand requirements with approximately 76% of the crude demand during 2006 being met through imports.

The Indian oil and gas industry has traditionally been dominated by the National Oil Companies. Recently, private companies, including Reliance Industries Ltd., Essar Oil Limited, Gujarat Adani Energy Limited and Gujarat Gas Corporation Ltd. have also emerged as prominent players across the industry segments. Foreign players with a significant presence in the Indian oil and gas sector, include BG, Cairn Energy, and Royal Dutch Shell.

Regulatory scenario

The industry is under the administrative charge of the Ministry of Petroleum & Natural Gas (MoPNG). FDI upto 100% under the automatic route (subject to sectoral policy regulations) is permitted in all activities except in refineries owned by National Oil Companies.

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

Recent developments and industry outlook

In the upstream segment, the New Exploration and Licensing Policy (NELP) has given a boost to private investment and an added impetus to exploration and production (E&P) activity (162 blocks have been awarded in the first six rounds of NELP in which exploration investments of USD 10 billion is expected to take place). The increased E&P activity under NELP has also facilitated some world class discoveries, of which, the Krishna Godavari basin gas discoveries of Gujarat State Petroleum Corporation and Reliance Industries Limited are the most noteworthy. In the downstream refining segment, India's capacity has more than doubled between

1998 and 2006, making the country a net exporter of petroleum products (net exports of 10 MT during 2005–06). The increased gas availability has boosted consumption particularly in the industrial and City Gas Distribution (CGD) segments.

In the future, the demand supply gap for oil and gas is projected to increase even further, due to high demand growth (projected to grow at 6.4% and 7.4%, respectively, from 2006–07 to 2024–25). Significant investments are expected to be undertaken in order to capitalize on the opportunities created by the growing demand.

In the upstream segment, the launch of NELP VII and increased E&P activity in the other NELP blocks are expected to result in large investments and new opportunities for upstream companies and service providers.

In the natural gas segment, significant investment is expected to take place in the establishment of new gas transmission and distribution pipelines and CGD networks. India's growing petroleum products surplus (expected to reach 60 MT by 2011–12) will also provide it with an opportunity to emerge as a regional refining hub.

Power

The Indian power sector has been one of the most vibrant sectors during the past one year with substantial progress in the generation, transmission, and distribution segment as well as the renewable energy segment. Ironically though, the sector has not been able to keep pace with the blistering economic growth leading to demand supply gaps in most of the progressive states.

As of September 2007, the total installed capacity stood at 135,781.6 MW. For 2006–07, the all India energy deficit stood at 9.6% and the peak demand deficit stood at 13.8%. As against the target of 41,100 MW installed capacity addition for Tenth Plan, only 21,180 MW has been achieved. Further, for the Eleventh Plan, the Ministry of Power has targeted capacity addition of 78,577 MW.

The complex transmission system, primarily run by the State Transmission Utilities (STU) and the Central Transmission Utility (CTU), is estimated to be approximately 355,000 ckt. Km (Circuit Kilometres) lines with 430,000

MVA of substation capacity at voltage 66 kV to 765 kV. The HVDC capacity is approximately 8,200 MW.

The distribution segment is crucial as it directly affects the consumers who pay for the electric supply. It is estimated that the total number of customers are more than 145 million with an average annual growth rate of approximately 4%, while the average per capita consumption is more than 650 units. Aggregate Technical & Commercial (AT&C) loss reduction that has been hovering around 35% is one of the key challenges in this segment.

The total investment required in capacity creation, transmission, and distribution is estimated at USD 200 billion, of which USD 100 billion is required for generation projects alone.

Regulatory scenario

The Power industry operates under the regulatory control of the Ministry of Power. The Central Electricity Regulatory Commission (CERC) at the national level and State Electricity Regulatory Commissions (SERCs) at the state level were established to facilitate reforms. The Ministry of New and Renewable Energy overlooks operations of the renewable energy based generation sector.

The Government has been striving to provide a conducive policy environment to encourage free and fair competition in each element of the energy value chain and attract capital from all sources—public and private, domestic, and foreign.

The Electricity Act (EA) 2003 was formulated to create a liberal development framework by the functional segregation of the generation, transmission, and distribution segments. This is aimed at de-licensing generation, open access in transmission and distribution, competitive tariffs, thereby encouraging private sector participation.

The National Electricity Policy 2005 provides guidelines for accelerated development of the electricity sector aimed at providing reliable electricity supplies to all by 2012. The National Tariff Policy 2006 assures electricity to consumers at reasonable and competitive prices; thereby improving the financial viability of the sector.

Recent developments and industry outlook

Recent guidelines issued ensure that all future generation and transmission projects are to be awarded through competitive bidding, further lowering the project cost and ensuring cheap power to consumers.

In generation, ten Ultra Mega Power Projects (UMPP) have been announced, out of which two projects viz; Sasan and Mundra have been awarded to Reliance Energy Ltd. and Tata Power Co. Ltd., respectively. New directives on hydro power are expected to be released soon. An amendment to the Electricity Act 2003 has allowed captive power generators to sell surplus power to end consumers. The Indo-US Nuclear Treaty that strongly promoted the opening of the Nuclear Power Generation segment has been put on the back burner due to domestic political issues.

The transmission sector is opening up, with increased participation by the private sector in Build Own Operate Transfer (BOOT) and Public Private Partnership (PPP) projects, including the Western Grid Strengthening Scheme.

In distribution, 14 states have unbundled, and additional directives are expected in the Accelerated Power Development & Reforms Program (APDRP) scheme. CERC has approved the setting up of the power exchange to trade power across the country, and the first one viz. India Electricity Exchange is expected to be operational soon.

Mining

India is endowed with huge reserves of several metallic and non-metallic minerals. Mineral production constitutes 6% of the country's GDP.

Adequate survey and exploration activities are yet to be carried out to adjudge the full potential of the country's vast resources. Despite a favourable FDI regime, foreign investment is much below the desired level due to policy and procedural issues.

Regulatory scenario

The Ministry of Mines regulates the mining sector, with the exception of coal and atomic minerals. State Governments own the minerals in their respective states. The Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) is the governing legislation in this sector.

FDI up to 100% is allowed under the automatic route for exploration and mining of minerals, including diamond and precious stones. However, no FDI/ private investment is permitted for coal mining except for captive consumption by power, cement, iron, and steel companies.

Recent developments and industry outlook

The Government has constituted a committee to review the National Mineral Policy 1993, which has submitted its draft report and the key recommendations[2], inter alia. Some of the key highlights are as follows:

- removal of delays for granting mineral concessions and forest clearances
- preferential allocation of mines to steel plants that do not have captive mines
- charging royalty on ad-valorem basis
- preference to those willing to set up an industry in a mining state
- prioritise infrastructural needs and facilitate investments to meet these needs
- set up new mechanism in stock exchanges for raising funds

The Indian mining sector can take a giant leap forward and significant investments can be expected if the above recommendations are accepted. However, the recommendation for captive mining can be a dampener.

The Government has revised royalty rates of royalty for coal in August 2007 and further, a comprehensive review of the coal policy is also underway, which will further provide an impetus to the investment in coal mining in India.

Information technology

The IT industry has been at the forefront of India's success story and continues to charter remarkable growth. The industry comprises software services, ITES (including BPO), and hardware. India's unparalleled prowess as an IT-ITES hub is well-established across the globe and the country is a key sourcing base and strategic market for the global IT-ITES sector.

Since 1999–2000, the sector has grown at a CAGR of over 28%; the industry's contribution to GDP has risen from 1.9% to a

[2] *As available in the public domain*

projected 4.8% in the current fiscal. The industry is anticipated to exceed USD 36 billion in 2005–06 and should achieve the targeted USD 60 billion by 2009–10. Exports are estimated to exceed USD 23.9 billion in 2006–07 while IT software and services employment is expected to reach 1.2 million in 2006–07.

Regulatory scenario

The Government has been proactive in encouraging foreign investment in the IT-ITES sector. Not only has the FDI regime been liberalised, there are also various fiscal incentives (including export-related incentives) that have been made available to IT operations in India.

Recent developments and industry outlook

The IT-ITES services is poised for rapid growth over the next few years by offering a wider services portfolio, catering to a larger set of industry verticals, and increasingly evolving to become a global Knowledge Process Outsourcing (KPO) hub.

A new opportunity on the engineering services front is also emerging. While currently India brings in approximately USD 1.8 billion of this market, by 2020 as much as USD 50 billion is estimated to belong to India.

Hardware is poised for robust growth with several MNCs setting up their manufacturing facilities in India. A policy for making India a preferred destination for the manufacture of semi-conductors and other high-technology products is proposed to be formulated shortly.

A national e-governance plan, which lays out the blueprint for a more e-enabled India, is to be implemented shortly. Further, amendments to the Information Technology Act 2000 are proposed, with a core focus on strengthening the information security environment.

Retail

With an estimated market size of USD 350 billion, India's retail sector is at the peak of its appeal for international and Indian players. Being the second-largest employer after agriculture and one of the largest growing sectors, it is expected to grow to USD 427 billion by 2010, thereby ensuring that the retail sector will remain one of the mainstays of the Indian economy. Modern retail accounts for approximately 4% of the total retail market in India. This share is expected to increase to approximately

15–20% with the entry of a number of corporates into the segment.

Regulatory scenario

FDI up to 100% is allowed under the automatic route in cash-and-carry wholesale trading and export trading. FDI up to 51%, with prior Government approval, has also been recently permitted in the retailing of 'single-brand' products. The Government is likely to adopt a calibrated approach, spread over a period of two to three years, to further open up the industry to foreign investment.

Recent developments and industry outlook

Many large Indian conglomerates and business houses are expressing their strong interest or making a significant headway in the retail sector. The organised retail segment is estimated to grow at more than 30% annually and exceed USD 20 billion by 2010. The demand for luxury brands in India is soaring, with many international retailers, for example, Gucci, Chanel, Louis Vuitton, Versace, Fendi, and Valentino among others who have already established their presence in India.

Changing lifestyle, strong income growth, and favourable demographic patterns have led to huge expansion in Indian retail. India is slated to have over 410 new malls by 2010, offering 205 million square feet of retail space. By 2015, it is estimated that there would be more than 715 operational malls offering 350 million square feet of retail space. A large section of this development is estimated to come up in tier II and tier III cities.

The rural revolution in India is also growing rapidly, driven by rising purchasing power, changing consumption patterns, easy access to information and communication technology, better infrastructure, and improved Government initiatives to boost the rural economy. The size of the rural retail market is estimated to exceed USD 45.2 billion by 2010.

Health sciences

The Indian Pharmaceutical industry has evolved substantially and transformed itself from a reverse-engineering led industry; focused on the domestic market, to a research-driven, export oriented industry with a global presence. As per Department of Chemicals and Petrochemicals estimates, the Indian Pharmaceutical Industry is a USD 12 billion enterprise, which includes approximately 45% contributions from exports. The domestic Indian pharmaceutical industry grew by nearly 17% in 2006–07 to USD 7.3 billion.

The Indian biotechnology industry grew by 31% in 2006–07 to approximately USD 2.1 billion in revenues over USD 1.5 billion in 2005–06. The biotech industry in India mainly consists of five distinct segments—biopharma, bioagriculture, bioinformatics, bioindustrial, and bioservices. The biopharma segment accounts for over two-thirds of the industry. During 2006–07, it recorded sales in excess of USD 1.5 billion and accounted for 71% of the total industry revenues. The biopharma sector registered 26.9% growth.

The Indian healthcare industry was worth approximately USD 34.2 billion (2006) with a CAGR of 16%. Healthcare delivery and pharmaceuticals account for nearly 75% of the total healthcare market. The private healthcare segment is by far dominant, with public health spending accounting for less than 1% of the country's GDP.

Regulatory scenario

In India, there is a clear demarcation of responsibilities between the Central Government and the State Governments. The Central Drugs Standard Control Organization (CDSCO) headed by the Drugs Controller General of India (DCGI) discharges the functions allocated to the Central Government. The CDSCO is attached to the office of the Directorate General of Health Services in the Ministry of Health and Family Welfare. The DCGI is a statutory authority under the Act and overlooks the functioning of port offices, zonal offices, and drug testing laboratories.

The DCGI is the regulator for the pharmaceutical industry, and is primarily responsible for the approval of new drugs and clinical trials and for setting drug quality standards. Under the Drugs and Cosmetics Act, the DCGI also coordinates with and regulates the state drug control authorities. Certain drugs are also subject to price controls imposed by the Ministry of Fertilisers and Chemicals (Drug Price Control Order).

The Department of Biotechnology is the nodal agency for policy-making, promotion of research and development (R&D), international cooperation, and manufacturing activities pertaining to biotechnology in the country.

Healthcare services come under the purview of the Union Ministry of Health and Family Welfare. The National Accreditation Board for Hospitals & Healthcare Providers is in the process of evolving a process of accreditation for healthcare facilities.

Recent developments and industry outlook

The Indian Patent Act of 1970 amended on 22 March 2005 marks the end of a protected era and signals a new phase in the integration of India into the global pharmaceutical market. The new amendment incorporating product patents seek to make copying of post-1995 patented drugs illegal. The challenges in the product patent regime and the generics business are significant: margin pressure, legal issues, parallel launch of authorized generics, and accessing distribution channels, among others. All this has necessitated a re-look at the existing business models and developing alternative models in preparation for the future.

In a fiercely competitive market like India, the ability of pharmaceutical companies to continually add new products (internal pipeline/licensing) in line with the emerging demand patterns is the route adopted by MNCs to sustain growth momentum. Pharmaceutical MNCs with relatively smaller presence or with limited sales force in specific therapeutic segments would either have to build up a wide network or in-license to a partner with a strong muscle in that particular therapeutic area.

Inorganic avenues of growth are being seriously looked at by domestic pharmaceutical companies to leverage the global advantage. Indian companies look for pipeline, relationship-building, and technological competence as the major influencers in any acquisition.

The biotechnology industry too has high growth potential; revenues are expected to grow to USD 5 billion by 2010 on the back of higher domestic consumption and rapid growth in exports.

With rise in income levels and increasing adoption of health insurance, the demand for tertiary care is expected to grow from the current share of 15–20% of the total healthcare market. The market for tertiary care is expected to grow at a faster rate due to the rise in complex in-patient ailments, for instance, heart diseases and cancer. The average annual growth in health expenditure by the BRIC countries is estimated at 11% for the 2006–11 period, reaching approximately USD 413 billion by the year 2011. Public spending on healthcare is currently at 0.9% of GDP, expected to double to 2% of GDP.

Roads

India has one of the largest road networks in the world, spanning approximately 3.8 million kilometres. Roadways account for approximately 80% of the passenger traffic and 65% of the freight traffic in the country. Over the past few years, road traffic has been growing at 7–10% and vehicle population at approximately 10% annually.

Regulatory scenario

The Department of Road Transport and Highways, under the Ministry of Shipping, Road Transport and Highways, is responsible for all policy matters relating to national highways. The National Highways Authority of India (NHAI) and the state-level departments of highways or public works departments are responsible for national and state highways, respectively.

The Government is actively encouraging the participation of the private sector in road infrastructure projects by providing incentives, including tax exemptions and duty-free import of road-building equipment. FDI upto 100% under the automatic route is permitted in roads and highways, toll roads, vehicular bridges, and road transport services.

Recent developments and industry outlook

The Central Government launched the National Highways Development Project (NHDP) in 1999 as it recognised the critical importance of expanding and strengthening the national highway network. The NHDP is being implemented in multiple phases. In Phases I and II, nearly 14,300 kilometres of national highways are being converted into four-lane or six-lane highways; in Phases III and IV, approximately 12,000 kilometres of national highways are to be upgraded to four-lane dual carriageways. Phases V and VI involve the six-laning of 6,500 kilometres of existing four-lane highways and construction of 1,000 kilometres of expressways.

NHDP is being funded through various mechanisms—budgetary allocation from the Government, loan assistance from multilateral agencies (the World Bank, Asian Development Bank, and Japanese Bank for International Cooperation, among others) and private sector participation.

The Government is further considering to upgrade 23,000 kilometres of single-lane highways to two-lane highways, and has also accelerated the development of roads in the north-eastern region. In addition, the Government has launched the Pradhan Mantri Gram Sadak Yojna, which involves providing good quality road connectivity to rural areas. The project will involve new road construction of 368,000 kilometres and upgradation of 370,000 kilometres of roads.

Ports

India is presently ranked 17 in the maritime nations of the world. Approximately 95% by volume and 70% by value of the country's external trade is carried on through maritime transport. The country's coastline comprises 13 major ports (Chennai, Ennore, Haldia, Jawaharlal Nehru, Paradip, Kandla, Kochi, Kolkata, Mormugao, Mumbai, New Mangalore, Tuticorin, and Visakhapatnam), and 187 minor and intermediate ports.

The total traffic handled by the major ports increased by 9.5% to 463.8 million tonnes in 2006-07, and by 13.7% y-o-y to 244.1 million tonnes in the first half of the current year.

Regulatory scenario

The Department of Shipping, under the Ministry of Shipping, Road Transport and Highways, has the primary responsibility to develop and manage the country's maritime infrastructure. The principal legislations governing Indian ports are The Indian Ports Act, 1908 and The Major Ports Trusts Act, 1963.

Major ports are governed by port trusts while State Governments are responsible for the administration of minor ports. With the entry of private sector players into port operations, the power to fix and revise tariffs has been entrusted to an independent authority—the Tariff Authority for Major Ports.

FDI up to 100% under the automatic route is permitted in the construction and maintenance of ports and harbours, maritime transport services, and internal waterways transport services.

The Department of Shipping is also planning to enact a Shipping Trade Practices Act, which is presently in the draft stage. Additionally, it has announced a new dredging policy to be followed by the major ports.

Recent developments and industry outlook

Since the announcement of guidelines for private sector participation, a number of projects involving private sector and foreign investment, including the construction of new container terminals, and new ports have materialized.

The total traffic at Indian ports is projected to grow at 7.7% CAGR to reach 876.7 million tonnes by 2011–12, of which the major ports are expected to account for 70% (615.7 million tonnes). To meet this projected demand, the total capacity requirement at the major ports is estimated at 800.4 million tones. The Government has launched the National Maritime Development Programme for sprucing up maritime infrastructure and expanding capacity at major ports, involving an investment of approximately USD 14 billion.

Real estate

Residential sales account for more than 75% of the total real estate market in value terms. There is scope for over 400 township projects of a population of 0.5 million each over the next five years spread over 30–35 cities.

There has been a sharp increase in demand for office space; India's total stock of Grade A office space was estimated to be approximately 120 million square feet (msf) at the end of 2006. The IT-ITES sector account for 70–75% of the total office space requirement. Estimates indicate that there will be demand for 172 msf of office space during 2008–10.

Growth in organized retail has led to increased demand for mall space in the country. At the end of 2006, there were approximately 90 malls totalling 19 msf across seven cities in the country. The retail stock is expected to reach approximately 60 msf by 2008.

There has also been a sharp rise in business and tourism related travel. In 2006, international tourist arrivals in India increased by over 13% to reach 4.4 million. There are close to 110,000 hotel rooms across categories in India; and an immediate requirement of approximately 100,000 new hotel rooms.

Regulatory scenario

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

- Township, housing, built-up infrastructure and the construction-development projects
- Hotel and tourism
- Setting up/development of industrial park/SEZ
- Construction and related engineering services

Corporate tax exemptions of up to 100% are available for projects, including industrial parks, SEZs, and hotel projects meeting certain conditions.

Recent developments and industry outlook

The sector is currently at the forefront of the Government's agenda and has assumed growing importance with the opening of the sector to foreign investment. SEBI has also approved introduction of real estate mutual funds (REMFs), which is a positive move forward and in line with global best practices followed by mature real estate/security markets.

Growing residential demand has created an estimated shortage of 24 million dwelling units, and the shortage is expected to increase to approximately 26 million housing units by 2012.

The current boom in the hospitality segment has resulted in existing hotels increasing their capacity and international hotels and service apartment chains establishing their operations in India. By 2020, India is expected to be a leading tourist destination in South Asia and demand for hospitality-focused real estate during 2005–09 is estimated to require a capital investment of USD 8–9 billion.

Telecommunications

In 2007, the Indian telecom industry achieved unexpected growth rates with eight million subscribers being added every month. The Indian telecom market has grown to become the third largest communications market in the world with revenues of over USD 22 billion, an average annual subscriber growth of approximately 45% and revenue growth of approximately 25%. The total subscriber base touched 250 million (approximate), driven by the growth in the wireless segment, which reached beyond 200 million (approximate) subscribers.

The year has seen a lot of market activity with many companies applying for the Unified Access Service License and global telecom player Vodafone picking up a 67% stake in Hutchison-Essar for an enterprise value of approximately USD 19 billion.

Regulatory scenario

Further to the enhancement of FDI ceiling from 49% to 74% for telecom service companies in November 2005, the Government of India reviewed its FDI policy. The key features of the revised FDI policy were:

A cap of 74% remains unchanged for the telecom service companies; however, the requirement of a 'serious resident Indian promoter' holding at least 10% of the equity was done away with. The majority of the Board of Directors shall still have to be Indian resident citizens, however, the Chairman, Managing Director, Chief Executive Officer, and/or Chief Financial Officer can now be 'foreign nationals'. Also, the Chief Officer In charge of technical network operations and Chief Security Officer shall have to be resident Indian citizens. In addition, the remote access of the equipment of telecom service companies can be provided to the foreign equipment vendors with a prior approval from the Department of Telecommunications.

Entertainment

The entertainment industry is one of the fastest growing sectors in India. The current size of the industry is estimated at USD 12.5 billion, and it is expected to grow to USD 25 billion by 2011.

The estimated revenues of the film industry and the television industry are USD 2.4 billion and USD 5.5 billion respectively; and are expected to grow to USD 4.4 billion and USD 13 billion, respectively. The estimated revenues of the music and radio industry are USD 185 million and USD 162.5 million, respectively, and are expected to grow to USD

217.5 million and USD 425 million. The estimated revenues of the advertising industry are USD 4 billion.

Regulatory scenario

The Ministry of Information and Broadcasting is responsible for laws, rules, and regulations related to information, broadcasting, the press and films. Telecom Regulatory Authority of India (TRAI) is the regulator for the Broadcasting and Cable Services.

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

Presently, FDI upto 100% is allowed in the film and advertising industry; 100% in television broadcasting, 20% in FM broadcasting, and 26% in publishing newspapers and periodicals dealing in news and current affairs.

Recent developments and industry outlook

India has signed audiovisual co-production agreements with Italy and Germany. The television industry is witnessing a divergence in the distribution platforms from traditional cable to digital platforms, with the emergence of Direct to Home entertainment (DTH) and Internet Protocol Television (IPTV). Further, the introduction of CAS will also help to boost the revenues of this industry.

The film industry is also witnessing a change with the growth in the number of multiplexes and digital cinemas. Digitization of the film distribution, cinemas, and pay television are expected to lead the change in the film industry.

Banking

Prior to the reforms in 1991, India's banking system was almost entirely owned by the Government, except for approximately 22 private sector banks and foreign banks. The reforms of 1991 led to the banking system's movement from a totally administered sector into a more market driven one. The entry of new private sector banks has brought increased competition, though public sector banks (PSB) still continue to dominate the banking system.

There are 94 scheduled commercial banks, which account for approximately 68,000 branches with a total asset size of USD 530 billion.

Regulatory scenario

The Ministry of Finance is responsible for the policies of the financial system. RBI regulates the banking system, NBFCs, and key financial institutions. The Banking Regulation Act, 1949; RBI Act, 1934; and Companies Act, 1956 are the governing regulations in this sector.

In private sector banks, foreign equity upto 74% is allowed under the automatic route, including FII investments (upto a maximum of 49%) and NRI investment (upto a maximum of 24%).

Recent developments and industry outlook

RBI has announced norms for the ownership of foreign banks in Indian private sector banks. A roadmap for the presence of foreign banks in India has been announced and from 2005–09, foreign banks are permitted to set up wholly-owned subsidiaries in India.

With a view to provide banks additional options for raising capital funds to meet both the increasing business requirements as well as the Basel II requirements, Indian and foreign banks have been allowed to augment their capital funds by the issue of certain hybrid instruments.

All commercial banks are expected to implement Basel II norms with effect from 31 March 2007.

From April 2009, RBI proposes to accord full national treatment to wholly-owned subsidiaries of foreign banks.

Capital markets

The Indian capital markets have witnessed a transformation over the last decade, and India is now placed among the mature markets of the world.

Regulatory scenario

SEBI was established as a statutory body in 1992 to:

- regulate and promote the development of the securities market and protect the interest of small retail investors;
- regulate the functioning of capital markets and issue

detailed guidelines concerning capital markets, disclosures by public companies, and investor protection; and

- formulate regulations to govern various intermediaries, and also regulate the mutual fund industry, investments by FIIs, and venture capital investments

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

Mutual Funds (MF)

The entry of private sector funds in 1993 has given the Indian retail/corporate investor a wider choice of fund families.

In 2006–07, overall assets under management grew by 40.7% to INR 3,262 billion. The dominance of the private sector has increased, and its shares in net resource mobilisation stood at 84.1% in 2006–07.

SEBI recently issued draft guidelines permitting real estate mutual funds (REMFs).

Foreign Institutional Investors (FII)

India has, of late, generated a high level of interest among FIIs on account of its deep and liquid stock market and relatively high returns generated by it. The net investment by FIIs increased from USD 45.3 billion to USD 52 billion during 2006–07. Further, the total number of FIIs registered with SEBI rose to 997 as on March 2007 compared with 882 a year ago.

Venture Capital Funds (VCF)

VCF visibility has increased over the last couple of years with several large funds looking actively at investments in India. Investments by VCFs stood at USD 176 billion as of March 2007.

Insurance

The insurance industry in India was traditionally the domain of Government-owned insurance behemoths, including the Life Insurance Corporation (LIC) in the life insurance segment, and the General Insurance Corporation, and the Export Credit and Guarantee Corporation in the non-life insurance segment. In August 2000, the insurance sector was opened up to private participation and since then, 17 new life insurance companies and 13 new general insurance companies have entered the market.

LIC dominates the life insurance sector with a market share of 54.2% during FY07. The performance of private sector players has been robust and their market share in premium increased to 45.8% in 2006–07 compared with 29% in 2005-06. In non-life insurance, the share of private insurers increased to 34% in 2006–07 compared with 26.6% in 2005–06.

Regulatory scenario

The Insurance Regulatory and Development Authority (IRDA) regulates the insurance and reinsurance business in India.

FDI (including FII and NRI investments) of upto 26% is allowed under the automatic route subject to obtaining license from IRDA.

Recent developments and industry outlook

There has been an intention to increase FDI in the sector from 26% to 49%. However, this policy initiative has been stalled on account of opposition from certain political parties.

A committee set up by IRDA for examining the feasibility of setting of 'Standalone Health Insurance Companies' has recommended an increase in the FDI limit in such companies upto 49% and a reduction in minimum capital requirements to USD 5.56 million[3] (equivalent of INR 250 million) from the current limit of USD 22.2 million (equivalent of INR 1 billion) applicable to any insurance company.

The General Insurance business has been subject to tariff regime. However, tariffs and controls have been gradually been dismantled in a time-bound manner. Pursuant to removal of controls on pricing of risks in general insurance business, full pricing freedom has been accorded for all new insurance and renewals risks (except for Motor Third party business) effective 1 January 2008.

Automotive

The Indian automotive industry, worth over USD 34 billion in 2005–06, comprises two segments—automobiles (approximately USD 24 billion) and auto components (approximately USD 10 billion).

The automobiles segment in turn comprises passenger vehicles (41% share of the segment in FY06), commercial vehicles (33%) and two and three wheelers (26%). The segment has grown at nearly 15% CAGR in

[3] *The USD value is an approximation; the currency conversions have been performed on the basis of Rs 40 = USD 1*

volume over the past four years to 11.1 million vehicles in 2006–07, of which exports have accounted for a steadily increasing share from 3.4% of total vehicles sold in FY02 to 9.1% in FY07.

The auto components segment comprises the Original Equipment Manufacture (OEM) market (70% of the segment in FY07), the replacement market (17%), and exports (13%). The auto components segment overall has grown at nearly 22% CAGR in value terms over the past four years to USD 10 billion in 2005–06. As in automobiles, component exports have grown at 40% CAGR over the past four years. The auto components segment is quite fragmented, with approximately 500 players, including several global ones.

Regulatory scenario

The barriers to entry in the automotive industry are relatively lower and setting up operations is easier without the need of any industrial licenses. FDI of 100% under the automatic route is allowed; and if a unit is set up in an SEZ, it is entitled to several fiscal benefits.

Besides, most State Governments offer additional incentives to units set up in their respective states.

The Government of India has drafted a ten year 'Automotive Mission Plan 2016' (AMP), aimed at fuelling the automotive industry growth. It estimates that by 2016, the automotive industry contribution to the country's GDP would be more than double to 10% and form 30–35% of the industry GDP.

Implementation of AMP would require an investment of USD 35–40 billion by 2016.

Recent developments and industry outlook

Almost all the major passenger car manufacturers are expanding their capacities to meet an expected double-digit growth in domestic demand. This would involve an aggregate investment of approximately USD 5 billion by 2009.

With an ever increasing rise in costs, auto component companies in the US, Europe, and Japan are under tremendous pressure to look for low-cost production bases to outsource components. Leading Indian players are leveraging this opportunity to acquire direct access to global clientele, latest technology, and to have synergistic global operations.

The automobiles and auto components segments are expected to grow at 11% CAGR in volume terms and 15% CAGR in value terms respectively by 2010–11. The growth rate in exports is expected to be maintained through increased outsourcing to India. India's share in total global outsourcing is expected to more than triple to 6.7% by 2015 with auto components exports reaching USD 20–22 billion.

B. Investment climate and foreign trade

B. Investment climate and foreign trade

B.1 Foreign investment framework

The FDI regime has been progressively liberalised during the course of the 1990s (particularly after 2000) with most restrictions on foreign investment being removed and procedures simplified. With limited exceptions, foreigners can invest directly in India, either wholly by themselves 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.

Industrial policy

The Industrial Policy Resolution, 1956 and the statement on the Industrial Policy, 1991 provide the basic framework for the overall industrial policy of the Government.

Industrial licensing

The requirement of obtaining an industrial license for manufacturing is now limited only to the following areas:

- Five industries of strategic, social or environmental concern (alcohol, tobacco, aerospace, and defence equipment, industrial explosives, and hazardous chemicals)
- Manufacture of items reserved for the small-scale-sector by non-small-scale industrial units or units in which foreign equity is more than 24%

All other industries are exempt from licensing, subject to certain locational restrictions in metropolitan areas.

Foreign investment policy

India welcomes FDI in virtually all sectors, except those of strategic concern, including defence (opened to a limited extent), railway transport, multibrand retail trading, and atomic energy, where the existing and notified sectoral policy does not permit FDI.

B.2 Economic policies and incentives for foreign investment

Features of the foreign investment policies and incentives

- No Government approval required for FDI in virtually all sectors/activities, except for a small negative list notified by the Government
- The Government has notified 'Sector Specific Guidelines for FDI' wherein investments up to specified sectoral caps are covered under the automatic route, with a few exceptions
- FIPB considers proposals for foreign participation that do not qualify for automatic approval
- Decisions on all foreign investment proposals are usually taken within 30 days of submitting the application
- Free repatriation of capital investment and profits thereon is permitted, provided the original investment was made in convertible foreign exchange
- Use of foreign brand names/trademarks for the sale of goods in India is permitted
- Indian capital markets are open to FIIs
- Indian companies are permitted to raise funds from international capital markets
- Special investment and tax incentives are given for exports and sectors, including power, electronics, software, and food processing
- 'Single window' clearance facilities and 'investor escort services' are available in various states to simplify the approval process for new ventures

Foreign Direct Investment (FDI)

The Government permits FDI on an automatic basis, except with respect to a small negative list comprising the following:

- Proposals involving a foreign collaborator who has an existing venture/tie-up in India in the same field (except in the IT and mining sector), and investments made by international financial institutions, including the Asian Development Bank, International Finance Corporation, Commonwealth Development Corporation, and Deutsche Entwicklungs Gescelschaft

- Proposals falling outside notified sectoral policy/caps
- Proposals for investment in public sector units, as also for EOU/EPZ/EHTP/STP units, qualify for the automatic approval route subject to satisfaction of certain prescribed parameters
- Proposals for foreign investment, which are not covered under the automatic approval route, are considered for approval by the Government

For a list of sectors in which 100% FDI is allowed, see Appendix 3.

Foreign Investment Promotion Board (FIPB)

FIPB is a specially empowered board chaired by the Secretary, MoF, set up specifically for expediting the approval process for foreign investment proposals.

Proposals for FDI may be sent to the FIPB Unit, Department of Economic Affairs, MoF or through any of India's diplomatic missions abroad. FIPB has the flexibility to examine all proposals in totality, free from predetermined parameters or procedures.

Recommendations of FIPB in respect of proposals falling in the non-automatic route and involving an investment of USD 150 million (equivalent of INR 6 billion) or less are considered and approved by the Finance Minister. Projects with an investment greater than this value are submitted by FIPB to the Cabinet Committee on Economic Affairs for further approval.

Foreign technology agreements

Foreign technology collaborations include the following:

- Technical know-how fees
- Payment for designs and drawings
- Payment for engineering services
- Other royalty payments

Foreign portfolio investment

FIIs must register themselves with SEBI and comply with the exchange control regulations of RBI.

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

Certain investment limits are prescribed in the FII Guidelines and the RBI Regulations to regulate the investment by FIIs. However, these investment restrictions do not apply to the investments made by an FII through offshore funds, GDRs, ADRs 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

Besides entities that are eligible as 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

ADRs /GDRs /FCCBs

Qualifying Indian companies are allowed to raise equity capital overseas through the issue of ADRs/GDRs/FCCBs. Where an 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 approval from the FIPB.

Preference shares/convertible debentures

Another way to invest in India is through the issue of preference shares. Foreign investments through convertible preference shares/convertible debentures, which are convertible into equity shares, are treated as FDI. Preference shares/debentures that are not compulsorily convertible into equity shares are construed as External Commercial Borrowings (ECB) and hence would need to conform to the ECB Guidelines. Investments through the above mediums may be made through the automatic route or the approval route, as per relevant sectoral policy/guidelines.

Investment by Non-resident Indians (NRIs)

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

Foreign exchange controls

Foreign Exchange Policy

Since 1991, the country's foreign exchange reserves have surged from USD 2 billion to approximately USD 271 billion in November 2006.

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

With the introduction of FEMA in 1999, the objective of the Government shifted from the conservation of foreign exchange to promoting orderly development and maintenance 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 necessary, 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

by a person resident outside India

- Guarantee by a person resident outside India, in favour 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
- Deposits between a person resident in India and a person resident outside India
- Foreign currency accounts in India of a person resident outside India
- Remittance outside India of capital assets in India of a person resident outside India
- Remittances abroad that require prior approval arrangements, including joint ventures and technical collaboration agreements
- Remittance of interest, dividends, service fees, royalties, repayment of overseas loans, and so forth.

The provisions in respect of repatriation of foreign exchange for select purposes have been summarised below.

Repatriation of Capital: Foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after the payment of taxes due on them, provided the investment was approved on a repatriation basis.

Royalties and Technical Know-how Fees: Indian companies that enter into technology transfer agreements with foreign companies are permitted to remit payments towards know-how and royalty under the terms of the foreign collaboration agreement, subject to certain limits.

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 engagement of foreign nationals in any calendar year.

Dividends: Profits and dividends earned in India are repatriable after the payment of taxes due on them. No permission of RBI is necessary for effecting remittance, subject to compliance with certain specified conditions.

Interest: Remittances towards interest on bonds, debentures, Government securities, bank deposits in India and dividends on the units of the Unit Trust of India to individuals permanently resident outside India are permitted.

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

External Commercial Borrowings (ECBs)

Debts raised in foreign currency fall within the purview of the definition of ECBs, and are regulated by MoF and RBI. ECB can be accessed under two routes, viz. automatic route and approval route.

ECBs up to USD 500 million for foreign currency expenditures fall under the automatic route subject to the compliance of the ECB policy. ECB can be availed by corporates registered under the Companies Act except for financial intermediaries, and must be availed from an internationally recognised source, 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 under no circumstances, can be used for on-lending, investment in capital market, working capital, and real estate. ECBs for rupee expenditure is permitted upto USD 20 million per borrower company per financial year, with prior RBI approval. In this context, redeemable preference shares/optionally convertible preference shares and debentures are considered ECB, and hence would also need to conform to the ECB Guidelines.

The minimum maturity period of the loan shall be three years for a loan amount less than USD 20 million, and for ECBs above USD 20 million and up to USD 500 million, the minimum average maturity period will be five years.

The all-in-cost ceiling for the ECB up to three years and up to five years is six months London Interbank Offered Rate (LIBOR) (in the respective currency in which the loan has been availed) plus 150 basis points. The all-in-cost ceiling for the ECB above five years is six months LIBOR plus 250 basis points. The ECB proceeds are required to be parked overseas, until actual requirement in India for permitted end use.

An empowered committee of RBI decides all cases falling outside the purview of the automatic route.

B.3 Economic laws and regulations

Key Economic Laws

- Indian Contract Act, 1872
- Copyright Act, 1957
- Trademarks Act, 1999
- Geographical Indications of Goods Act, 1999
- Indian Patents Act, 1970
- Designs Act, 2000
- Industrial Disputes Act, 1947
- Maternity Benefit Act, 1961
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Workmen's Compensation Act, 1923
- Industrial Employment (Standing Orders) Act, 1946
- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- The Factories Act, 1948
- Employees Provident Fund and Miscellaneous Provisions Act, 1952
- Monopolies and Restrictive Trade Practices Act, 1969
- Competition Act, 2007
- Consumer Protection Act
- The Negotiable Instruments Act, 1881
- The Sale of Goods Act, 1930
- Arbitration and Conciliation Act, 1996

Indian Contract Act, 1872 (ICA)

The Indian law of contract is based on the common law principles of contract, and is codified as the ICA. ICA has borrowed extensively from the provisions of codes governing the law of contracts in other countries.

Through subsequent amendments, the provisions concerning certain specific forms of contract, including contract of partnership, contract of carriage, and contract for sale of goods were removed from ICA and enacted into a separate legislation.

Intellectual property rights protection

The laws relating to intellectual property in India are still in the process of transition, and are being harmonised with corresponding laws in developed countries.

As a signatory to General Agreement on Tariffs and Trade GATT and trade-related aspects of intellectual property rights (TRIPS) agreements in the 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

Copyrights

India's copyright law, laid down in the Indian Copyright Act, 1957 as amended by Copyright (Amendment) Act, 1999, fully reflects the Berne Convention on Copyrights, to which India is a party.

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

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

The copyright law in India has been amended from time to time to keep pace with the changing requirements. The amendments made to the copyright law have ushered in comprehensive changes and brought it in line with the new developments in satellite broadcasting, computer software, and digital technology.

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

Trademarks

The Trade and Merchandise Marks Act was passed in 1958 to provide for the registration and protection of trademarks, and for the prevention of the use of fraudulent trademarks. Subsequent to a comprehensive review of the same, a bill to repeal and replace the 1958 Act was passed by the Parliament in 1999. The Trademarks Act, 1999 provides for the registration of trademarks for services and goods, including collective marks, and for the assignment and transmission of trademarks.

There is a provision for an appellate board for speedy disposal of appeals, rectification of applications, and simplification of procedures for the registration of the registered user. The provision also allows for extending the scope of the permitted use of trademarks, and prohibition on the use of someone else's trademarks as part of corporate names or names of business concerns.

The Act also provides for the incorporation of other provisions, for instance, the amendment in the definition of 'marks', provision for filing of a single application for registration in more than one class, a 10-year period for the registration and renewal of trademarks, and for making the trademarks offence cognisable. The Trademarks Rules were notified on 26 February 2002.

The Controller General of Patents, Trademarks and Designs has been appointed by the Government to administer the various provisions of the Trademarks Act. As per the provisions of the Act, and with a view to fulfil the obligations of the WTO agreements and the other treaties entered into by India, the Act grants the holder of a foreign trademark the right to register a trademark in India.

Geographical indications of goods

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) was passed by the Parliament in December 1999 and the Geographical Indications of Goods (Registration and Protection) Rules were notified on 8 March, 2002.

The GI Act has been introduced to conform to the TRIPS regime. It seeks to provide for the registration and better protection of geographical indication related to goods in India, and is designed to protect the use of such geographical indication from infringements by others, and to protect the consumers from confusion and deception.

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 the claims made in the applications filed on or after 1 January 1995.

To harmonise 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), GATT and TRIPS agreements.

Industrial designs

The Designs Act, 2000, passed to give recognition to the obligations under the 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 is to protect the novel designs made with the object of applying the design to particular articles to be manufactured and marketed commercially for a specific period of time, from the date of registration.

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.

Labour laws

India is a member of the International Labour Organisation, and complies with the conventions that it has ratified. It has enacted comprehensive legislations to provide a good working environment for the labour and to protect their interests.

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

Industrial Disputes Act, 1947 (IDA)

IDA provides for the investigation and settlement of industrial disputes or certain other matters in an industrial establishment related to lockouts, lay-offs, and retrenchment. It provides the machinery for the conciliation and adjudication of disputes or differences between the employees and the employers, among workmen and among different employers.

Further, IDA prescribes penalties for any person who indulges in any unfair labour practices.

Maternity Benefit Act, 1961 (MBA)

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, delivery and/or premature birth of a child.

MBA prescribes penalties for the contravention of its provisions by the employer.

Payment of Bonus Act, 1965 (PBA)

PBA provides for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity, and for matters connected therewith.

PBA provides for the appointment of inspectors by the Government by notification. These inspectors can call upon the employer to furnish any such information that may be considered necessary. They can further ask the employer to submit books and registers and other documents related to the employment of persons or the payment of salary or wages or bonus.

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

Payment of Gratuity Act, 1972 (PGA)

PGA provides for a scheme for the payment of gratuity to all employees getting wages to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such a person is employed in a managerial or administrative capacity.

Gratuity is payable to an employee on his retirement/resignation, superannuation, termination on account of death or disablement due to accident or disease or retirement.

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

Workmen's Compensation Act, 1923 (WCA)

The object of WCA is to compensate an employee for any injury suffered during the course of his employment. WCA provides that compensation shall be paid to a workman in the case of his surviving an injury and to his dependants in the case of his death.

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

Industrial Employment (Standing Orders) Act, 1946 (IEA)

IEA requires employers in industrial establishments to clearly define the conditions of employment to their workers by issuing standing orders/service rules related to the matters set out in the schedule of IEA. The standing orders are to be certified by the certifying officer appointed under IEA.

The Industrial Employment (Standing Orders) Central Rules, 1946 provides for model standing orders, with respect to the classification of workmen, holidays, shifts, payment of wages, leaves, and termination, among other things.

Minimum Wages Act, 1948 (MWA)

MWA seeks to determine the minimum rates of wages in certain employments specified in the Schedule of the Act. 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 materials are given for doing some work either at home or at any other premises.

Payment of Wages Act, 1936 (PWA)

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 PWA are disbursed by the employers within the prescribed time limit and that no deductions, other than those authorised by law, are made by the employers.

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

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

Factories Act, 1948

The Factories Act extends to the whole of India, and it is the principal legislation that governs the health, safety, and welfare of workers in factories. Many amendments were made with the aim of keeping the Act in tune with developments in the field of health and safety. However, it was not until 1987 that the elements of occupational health, safety, and prevention and protection of workers employed in hazardous processes got truly incorporated in the Act.

The Act also contains regulations for the functioning of factories and detailed procedure related to inspection, registration, and licensing of factories.

Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPFMPA)

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

The Government has prescribed various penalties at prescribed rates for any default, which the employer may make in connection with the payment of any contribution, arrears, accumulations, and administrative charges, to the fund and/or has also prescribed imprisonment.

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 Government has evolved an anti-trust regulatory framework that revolves principally around the following legislations:

- Monopolies and Restrictive Trade Practices Act, 1969, which is in the process of being replaced by the Competition Act, 2002 (No. XII of 2003)
- Certain provisions under the Companies Act, 1956
- Consumer Protection Act, 1986

Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)

The Competition Act received the assent of the President on 13 January 2003, and was published in the Gazette on 14 January 2003. The Act intends to repeal the MRTP Act. However, as of date, no substantive provision of the Act is in force and the same would come into force as and when notified by the Central Government. As of now, the MRTP Act is still in force.

The MRTP Act governs the activities/practices of all industrial undertakings being such enterprises, which are engaged in the production, storage, supply or distribution of articles/goods either directly or indirectly through any of its units or divisions. However, Government undertakings do not come under the purview of the MRTP Act. It encompasses within its ambit, essentially the following types of prohibited trade practices, namely, 'restrictive trade practice', 'unfair trade practice', and 'monopolistic trade practice'.

Under the MRTP Act, the regulatory body is the Monopolies and Restrictive Trade Practices Commission. The Commission is assisted by the Director General of Investigation and Registration who is responsible for providing assistance to it in carrying out investigations and maintaining a register of agreements, which are required to be regulated under the Act and undertaking carriage of proceedings during the enquiry before the Commission.

There are certain provisions in Part IV of the Companies Act, 1956 regulating the acquisition and transfer of shares of a body corporate owning any undertaking to which the provisions of Part A of Chapter III of the MRTP Act would be applicable. These provisions intend to prevent acquisition or takeover of companies to further avoid concentration of economic power. Accordingly, these provisions stipulate that certain types of acquisitions would require prior approval of the Central Government.

Competition Act

The Competition Act, which shall replace the MRTP Act, seeks to achieve the following objectives:

- Promote and sustain competition in markets
- Protect the interest of consumers
- Ensure freedom of trade
- Provide for the establishment of the Competition Commission of India (CCI).

The major provisions of the Competition Act relate to prohibition of anti-competitive agreements, prohibition of abuse of dominant position, regulation of combinations, establishment, powers, functions and duties of the CCI.

Consumer Protection Act (CP Act)

The 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, which provides any goods/services in India, is required to avoid any trade practice that may 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 from defective goods and/or deficiency of services.

This Act contains provisions for district, state, and national consumer disputes redressal to adjudicate over claims, complaints and disputes, which result under the provisions of the CP Act.

Negotiable Instruments Act, 1881 (NI Act)

The law related to promissory notes, bills of exchange, cheques, and other negotiable instruments is codified in India under the NI Act. The main object of the NI Act is to legalise the system by which the instruments contemplated by it could pass from hand to hand through negotiations like any other goods.

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

Sale of Goods Act, 1930

The Sale of Goods Act is complimentary to the Contract Act. The basic provisions of the Contract Act apply to the contract of sale of goods also. The basic requirements of a contract, i.e. offer and acceptance, legally enforceable agreement, mutual consent, parties competent to contract, free consent, lawful object, and consideration apply to the contract of sale of goods.

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

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

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

The Act casts various duties and grants certain rights on 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 is transferred to the buyer and he refuses to pay for the same, the only remedy with the seller is to approach the court. The seller has no right to take forceful possession of goods from buyer, once the property in goods is transferred to him. However, the Act gives some rights to the seller if his dues are not paid and the goods are not transferred to the buyer.

An elementary principle of law is that a buyer or a seller who is responsible for breach of contract is bound to pay compensation for any loss or damage caused to the other party, provided that the loss or damage arose in the usual course of things from such a breach or was such that the parties knew when they made the contract that such loss or damage was likely to result from such breach of it. The Sale of Goods Act helps buyers to obtain redress when their purchase goes wrong.

Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 has been enacted to replace three previous laws dealing with the various aspects of arbitration. This Act is essentially based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. The important feature of the UNCITRAL laws and rules are that they have harmonised concepts on the arbitration and conciliation of different legal systems of the world. It has 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 upon the venue/place and procedure of the arbitration proceeding.

B.4 Special investment considerations

Special Economic Zones (SEZ)

Overview

SEZ Regulations provides for the setting up of SEZs in the country with a view to enable an internationally competitive and hassle-free environment for exports. Units may be set up in an SEZ for manufacture, trading, or for services activity. The Income tax benefits to units engaged in trading is limited to the activity of import for the purposes of re-export.

The policy provides for the setting up of SEZs in the public, private, or joint sectors or by State Governments. The Central Government has also converted some of the existing EPZs/FTZs (Free Trade Zones) into SEZs to give momentum to this sector. There are today 172 notified SEZs (as at November 2007) in India, which include multi-product, sector specific, and free trade warehousing zones.

More than 550 SEZs have been approved by the Government and are under various stages of establishment. Some of the SEZs approved for setting up are located at Dronagiri (Maharashtra); Kulpi (West Bengal); Paradip (Orissa); Bhadohi, Kanpur and Greater Noida (Uttar Pradesh); Kakinada (Andhra Pradesh); Hassan (Karnataka); and Positra, Dahej, Mundra, Vanj-Surat, Hazira-Surat and Icchapur-Surat (Gujarat). Some of these SEZs are in the initial stages of development while some are ready for operation.

In November 2007, the Ministry of Commerce estimated that SEZs would generate direct and indirect employment for over 3 lakh people by December 2008. FDI of USD 40 billion is also expected in the infrastructure development of the SEZs, and in setting up of units in the Zones by end of next year.

SEZ scheme

The SEZ scheme has the following salient features:

- Designated duty-free enclave to be treated as foreign territory for trade operations and duties and tariffs
- Permitted activities are manufacture of goods, services, production, processing, assembling, reconditioning, re-engineering, packaging, and trading

- SEZ units to be positive net foreign exchange earners calculated cumulatively for a period of five years from the commencement of production
- Duty-free goods to be utilised within the approved period
- Performance of SEZ units to be monitored by a Approval Committee consisting of the Development Commissioner and the officers nominated by the Central and State Government.

Incentives for SEZ units

- Duty-free import of capital goods (including second-hand capital goods), raw materials, consumables, and spares
- Duty-free procurement of capital goods (including second-hand capital goods), raw materials, and consumable spares from the domestic market
- Exemption from payment of central sales tax on interstate purchases from the domestic market
- Exemption from service tax for services provided to a unit (including a unit under construction) of an SEZ
- SEZ units are permitted to sell production in the domestic tariff area (DTA) on payment of full customs duty, subject to the import policy in force. In the block of five years, the Unit should achieve positive net foreign exchange earnings,
- Certain supplies in DTA, including supplies to EOU/ STP/ EHTP/ BTP/ SEZ units, holders of special import licences, and sale of ITA bound items (even where payment is received in Indian rupees) would be counted towards the achievement of positive net foreign exchange earnings
- Subcontracting is permissible subject to prescribed conditions.
- Subcontracting of parts of production permitted abroad
- No routine examination by the customs of export and import cargo
- Re-export of imported goods found defective, import of goods from foreign suppliers on loan basis etc.
- Facility to retain 100% of the foreign exchange receipts in the export earner's foreign currency account

Incentives for developers of SEZs

- No net foreign exchange earning requirement/export obligation imposed on SEZ developers
- Procure goods from the DTA without the payment of duty or import specified goods without payment of customs duty as may be notified by the Government for the development of the SEZ
- Full freedom in allocation of areas within SEZ to approved SEZ units on a purely commercial basis
- Full authority to provide services, including water, electricity, security, restaurants, and recreation centres on commercial lines
- Facility to develop a township within the SEZs with residential areas, markets, playgrounds, clubs, and recreation centres adhering to the SEZ norms
- Exemption from service tax on input services and
- Exemption from central sales tax

For information on direct tax incentives, kindly refer to section C4.

Institutional framework

The Development Commissioner/ Approval Committee of the SEZs has been entrusted with the responsibility of granting approvals for setting up units in SEZs. Post-approvals, wherever required, approvals are also given by the Development Commissioner of SEZs.

100% Export-Oriented Units (EOU)

Apart from SEZ, with a view to encouraging exports, the Government has formulated the EOU scheme. Such units may be set up as 100% EOUs .

FDI in EOUs qualifies for the automatic approval route, subject to its conforming to existing guidelines for FDI. The units need to be positive net foreign exchange earners in a block of five years.

The following incentives are available for EOUs:

- Exemption from customs duty on industrial inputs and capital goods, including second-hand capital goods (without age limit)
- Local procurement of inputs and capital goods (including second-hand capital goods)

exempted from the payment of excise duty

- Reimbursements of central sales tax paid on interstate purchases
- DTA sale of goods or rendering of services on payment of applicable duties is permitted up to 50% free on board value of exports/ or 50% of foreign exchange earned subject to the fulfilment of other obligations of the scheme
- Certain supplies to the DTA counted towards fulfilment of positive net foreign exchange earner

Similar incentives are offered to units engaged in the field of biotechnology, electronics and software, which can be set up under the BTP, EHTP or STP schemes.

State-level incentives

State Governments have proactively come up with several incentives to encourage investment and attract capital, which include the following:

- Special tax incentives
- Rebate on cost of land
- Rebate on stamp duty on sale/lease of land
- Concession in power tariff for new units
- Self-certification under various Acts
- Special incentive packages for mega projects
- Employment subsidies

Investment incentives

Various states have incentive schemes to attract investment by financing a certain percentage of the fixed capital cost of a project. These states have designated areas as 'A', 'B', and 'C' according to their level of development. The level of incentives provided by states varies, and is generally larger for investments made in backward areas. Further, the terms and the ceiling of incentives vary across states, depending on the nature of industry that the state is trying to promote.

Power tariff incentives

Power tariff incentives are extended by State Governments in various ways, including:

- Exemption from the payment of electricity duty,
- Freeze on the tariff charged for new units for a few years after commencement of production,

- Assurance of uninterrupted electricity supply, concessional rates of billing subject to certain conditions, and
- Financial incentives for purchase and installation of captive power generation sets

Other incentives

Some states extend other incentives to small-scale units or priority industries as defined in their industrial policy statements. An indicative list of such incentives is:

- Concessional rate of interest on loans granted by state finance corporations
- Price preference on goods made by small-scale industries in purchases made by Government and semi-Government organisations
- Exemption from the payment of octroi (entry tax) for a certain specified period
- Preferential allotment of land and sheds in industrial areas to small-scale industries
- VAT can be deferred in lieu of interest-free loans

A few states have taken the initiative to streamline the investment approval process by introducing common application forms for various approvals. A 'green channel facility' has been introduced in some states, whereby applications required for clearances will be received and processed through the various institutional offices on a time-bound basis.

Government-owned industries and privatization

Rapid industrialisation has been the basic objective of India's development policy since independence in 1947, when the Government adopted several promotional and protective measures to foster industrial growth.

The Government now recognises that most industries develop through the enterprise and initiative of private individuals and companies. Consequently, since 1991, the Government has been taking measures to deregulate trade and industry and introduce financial sector and trade reforms to accelerate economic growth and to enhance international competitiveness. Some of these reforms were targeted to dismantle bureaucratic controls, liberalise international trade, privatise the public sector, and encourage entrepreneurial activity and technological development.

The Government has reduced the number of industries reserved for the public sector to the following two industries, which are deemed significant from a security and strategic perspective:

- Atomic energy
- Railway transport

Recently, the railways announced opening up of its containerised operations to other private and public sector companies, thereby breaking the monopoly enjoyed by its subsidiary Container Corporation of India. Interested companies can now take route-specific or all-India permission by making a one-time registration fee for an operation period of 20 years, which is further extendable by another 10 years. These companies would be free to decide the tariff charged to their customers for haulage, terminal handling, and ground rent. Further, the companies can exit operations by transferring the permission to another eligible operator with the railways approval.

B.5 Regional and international trade agreements and associations

Overview

Over the years, India has entered into various bilateral and regional trading agreements. These agreements besides offering preferential tariff rates on the trade of goods among member countries also provide for wider economic cooperation in the fields of trade in services, and investment and intellectual property, thereby leading to greater trade liberalization.

Existing Trade Agreements and Regulatory Scenario

Some of the existing key trade agreements entered by India under which preferential tariff rate is provided for specified goods traded between the countries are as follows:

- Comprehensive Economic Co-operation Agreement (CECA) with Singapore
- Framework Agreement with Thailand
- Free Trade Agreement with Sri Lanka
- Asia Pacific Trade Agreement

with Bangladesh, Republic of Korea, China and Sri Lanka

- SAARC Preferential Trade Agreement
- South Asian Free Trade Agreement executed by India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka
- Global System of Trade Preference with 48 countries
- Preferential Trade Agreement with Chile

The trade agreements are monitored and regulated by the Central Government through the Directorate General of Foreign Trade.

Recent developments and industry outlook

Following trade agreements are at the advanced stage and could come into operation soon:

- India–MERCOSUR Preferential Trade Agreement (would be operational on ratification by MERCOSUR countries)
- India–ASEAN Free Trade Agreement (negotiations targeted to be concluded by 2007)

Joint study group/ task force has been constituted for the purpose of trade agreement with the following countries:

- Asian countries: Republic of Korea, Malaysia, Japan, Indonesia, Gulf Cooperation Council (GCC), China, and Bangladesh;
- Other Countries: Russia, Israel, Mauritius, Egypt, South African Customs Union (SACU), and the European Union

In the coming year, India and Sri Lanka expect to expand their existing Free Trade Agreement to include trade in services under a Comprehensive Economic Partnership Agreement (CEPA). Negotiations with South Korea over CEPA were also expected to be completed soon. Further, India also proposes to enter into CEPAs with Nepal and Mauritius, respectively.

B.6 Major trading Partners and leading imports and exports

Trading partners

The European Union and the US have replaced the former Soviet Union as India's largest trade partners globally. In Asia, China, the Middle-East, Singapore, and Japan are the country's largest trading partners. Australia is a primary source for supplies of coking coal, pulses, wool, and non-ferrous metals.

Foreign Trade Policy (FTP)

FTP announced by the Government seeks to complete the process of India's integration with the global economy by the removal of quantitative restrictions. It seeks to provide fresh direction to exports by setting up agricultural export zones, providing special benefits to SEZs, and providing various export incentive schemes. The FTP is forward-looking and liberal, and is the logical conclusion to India's commitments under the WTO agreement.

It covers duty-free import facility for the services sector and status holders on the fulfilment of certain conditions. It aims to boost the electronic hardware and software industries and the gems and jewellery sector. The policy has brought about radical changes in the various export-oriented schemes and has thus benefited the economy.

Imports

Most goods are freely importable on the payment of a specified customs duty. A small number of goods fall in the prohibited/restricted list of imports. Such restrictions are generally on grounds of national security, health, and environmental protection.

There are no quantitative restrictions on the import of capital goods and intermediates, including second-hand capital goods; and restrictions exist only in respect of a few items.

- Import of second-hand capital goods is allowed freely
- Duty drawback is available for imported raw materials for export production
- Duty-free import of raw materials is possible for export production in specified conditions
- Concessional duty rate is available for capital goods under the Export Promotion Capital Goods Scheme
- Imports from certain countries are permissible at reduced rates

Raw materials, intermediates, and components meant for the manufacture of goods for export can be imported duty-free against an advance license. Input-output norms have been laid down to determine the amount of duty-free import of inputs allowed for specific products to be exported. The issue of a duty-free license under this scheme is subject to the achievement of positive value-addition and export obligations.

New or second-hand (without age limit) capital goods may be imported under the Export Promotion Capital Goods Scheme. These capital goods may be imported at a concessional basic customs duty rate of 5%. However, this concession is subject to an export obligation to be fulfilled over a specified period.

Exports

Export of goods is allowed freely, except for a few restricted items. Exports are the major focus of India's trade policy and are a thrust area in the new economic policy of the country. The export promotion package compares favourably with incentives offered anywhere in the world. It makes a special effort to attract foreign investors to set up EOUs and units in SEZs.

Foreign Trade—Key Statistics

Exports: USD 126.4 billion (2006–07)

Principal exports: Traditional exports include cotton yarn and textiles, readymade garments, gems and jewellery and agricultural products. However, IT services, engineering products, chemicals, pharmaceuticals, and petroleum products are now rapidly growing export segments.

Principal markets for export: Principal markets for exports are the US, the UAE, China, Singapore, the UK, Germany, Italy, Belgium, Japan, Netherlands, Saudi Arabia, Korea, Sri Lanka, South Africa, France, Indonesia, Spain, Bangladesh, Brazil, and Iran (top 20 countries by share of exports in 2006-07).

Imports: USD 185.7 billion (2006–07)

Principal imports: Capital goods, crude petroleum and petroleum products, gold, precious and semi-precious stones, chemicals, edible oils, electronic goods, and coal.

Principal countries of import: Principal countries of import are China, Saudi Arabia, the US, Switzerland, UAE, Iran, Germany, Nigeria, Australia, Kuwait, Iraq, Singapore, Malaysia, Korea, Japan, France, the UK, Indonesia, Belgium, and Italy (top 20 by share of imports in 2006–07).

Balance of trade

The performance of India's exports sector has been excellent over the last five fiscal years, with y-o-y growth rates consistently exceeding 20%. In 2006–07, merchandise exports increased by 22.5% to USD 126.3 billion. In the first half of the current fiscal year, exports grew by 18.5% y-o-y to USD 72.3 billion, despite the significant appreciation of the Indian rupee vis-à-vis the US dollar.

With rapid growth in industrial production and investment as well as surges in international crude prices, imports too have shown rapid growth in the last five fiscal years; in most years, imports have grown faster than exports. In 2006–07, imports grew by 24.5% to USD185.8 billion. In the first half of the current fiscal year, imports grew by 25.6% to USD109.3 billion.

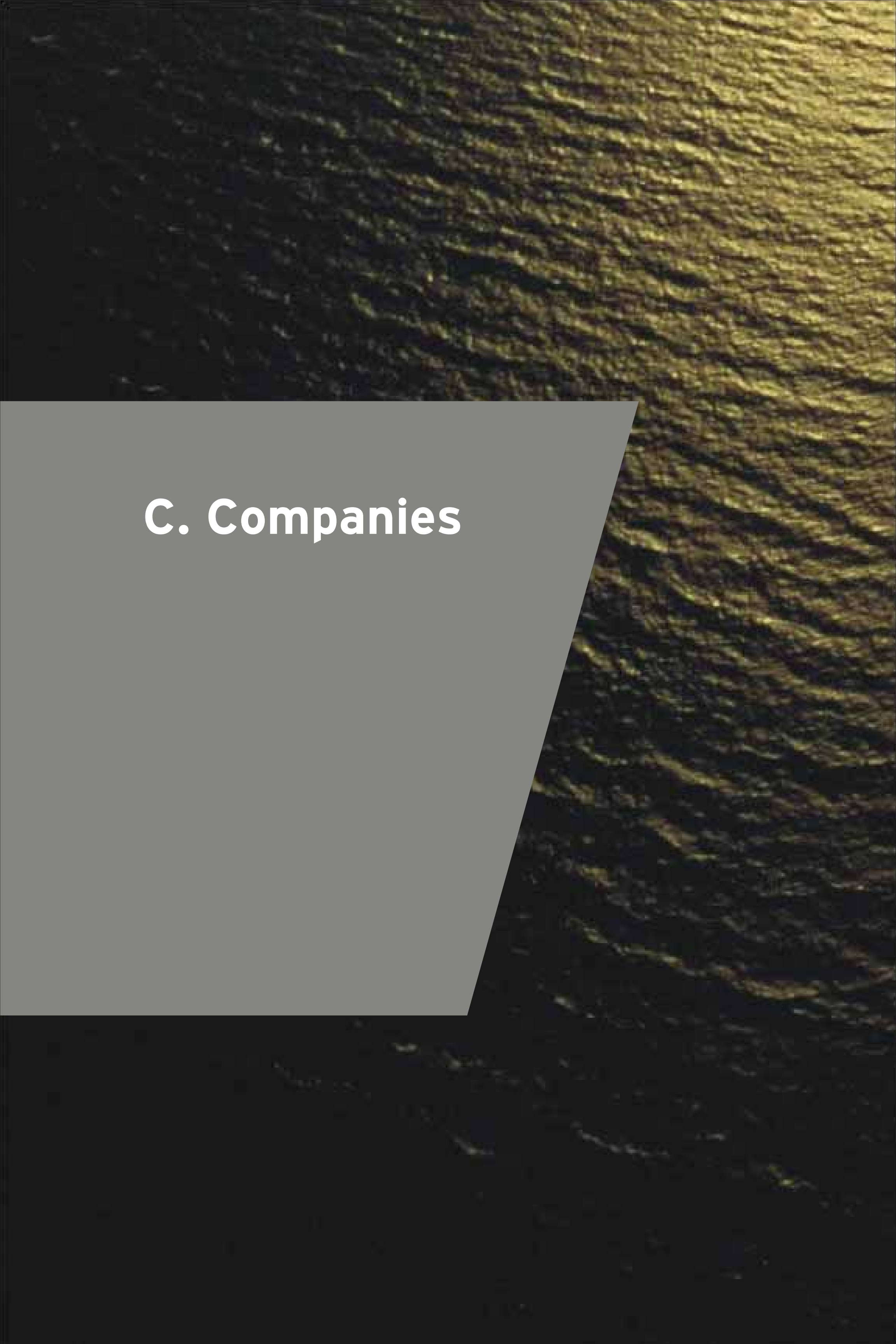
Merchandise trade deficit, therefore, has been steadily increasing over the past few years, from USD 8.7 billion in 2002–03 to USD 59.5 billion in 2006–07. The deficit in the first half of the current fiscal is USD 37 billion. However, if the country's burgeoning services exports is also taken into consideration, the growth in deficit is much more moderate.

Tariff liberalisation

The current trade policy is characterized by rationalized tariff levels and the removal of quantitative restrictions.

There has been a consistent decline in the rates over the past 15 years—from peak rates of 350% in June 1991 to 15% in 2005–06. Most capital goods imports attract a basic customs duty at the rate of 7.5% to 10%. Import duties on equipment are lower for projects in specific sectors. The tariff structure is favourable for companies targeting to import equipment to set up projects in the infrastructure sector.

C. Companies



C. Companies

C.1 Forms of enterprise

The following are the principal forms of business organisations in India:

- Corporations
- Partnerships
- Sole proprietorships
- Limited Liability Partnership (Proposed Concept under Legislative Scrutiny)

Corporations incorporated in India and foreign corporations with a presence in India are regulated by the provisions of the Companies Act, 1956, which draws heavily from the Companies Act of the UK. The Registrar of Companies and the Company Law Board (CLB), both working under the Ministry of Company Affairs, have been entrusted with the responsibility of ensuring compliance with the provisions of the Companies Act, 1956. An amendment was passed under the Companies Act through which a National Company Law Tribunal (NCLT) is proposed to be set up to take over the functions being hitherto performed by CLB, and to discharge various other functions under the Companies Act.

Major types of corporate forms

Corporations in India may broadly be classified into public and private sector corporations. A private sector corporation can further be classified as a public or private corporation with limited or unlimited liability. A corporation can be limited by shares or by guarantee. In the former, the personal liability of members is limited to the amount unpaid on their shares while in the latter; the personal liability is limited by a pre-decided nominated amount. For a corporation with unlimited liability, the liability of its members is unlimited.

A corporation established for charitable purpose would be allowed to be formed under the provisions of Section 25 of the Companies Act, 1956. The profit generated from the activities is not allowed to be distributed to the shareholders, but must be used for the purpose for which the corporation is established.

Private corporations

A private corporation* incorporated under the Companies Act, 1956 has the following characteristics:

- Right to transfer shares is restricted.
- 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 corporation is required to have a minimum paid-up capital of USD 2,500 (equivalent of INR 0.1 million) with a minimum of two directors and two shareholders.

Public corporations

A public corporation* is defined as one that is not a private corporation. A subsidiary of a public corporation is also treated as a public corporation. A public corporation is required to have a minimum paid-up capital of USD 12,500 (equivalent of INR 0.5 million) with a minimum of seven members and three directors.

* *In both public and private corporations, if the name of the Indian company contains the word 'India', the minimum authorised capital would be USD 12,500 (equivalent of INR 0.5 million)*

Foreign corporations

Foreign corporations that are incorporated outside India but have a presence in India in the form of liaison offices, project offices, and branch offices are also governed by the Companies Act, 1956, which contains special provisions for regulating such entities.

Structures typically used by foreign investors

Subsidiary companies

Foreign corporations can set up their subsidiary companies in the form of private companies in India. The subsidiary company, incorporated under the laws of India, is treated as a domestic company for tax purposes.

In comparison with branch and liaison offices (discussed in the following paragraphs), a subsidiary company provides maximum flexibility for conducting business in India. However, the exit procedure norms of such companies are relatively more cumbersome. Below are some of the features of a subsidiary company:

- Funding could be via equity, debt (both foreign and local), and internal accruals
- Indian transfer pricing regulations shall apply
- No approval is required for the repatriation of dividends

Branch office

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

A branch office is also required to register itself with the Registrar of Companies and comply with certain procedural formalities prescribed under the Companies Act, 1956. A branch office is permitted to 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 India
- Rendering services in IT and software development in India
- Rendering technical support to the products supplied by parent/group companies
- Undertaking activities of foreign airline/shipping companies
- Manufacturing by a branch located in a SEZ

For income tax purposes, a branch office is treated as an extension of the foreign corporation in India and taxed at the rate applicable to foreign companies.

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

Liaison office

Foreign corporations are permitted by RBI to open liaison offices in India (subject to obtaining specific approval) for undertaking liaison activities on their behalf. These offices act as a communication channel between the foreign corporations and the Indian customers. Such offices are normally established by foreign corporations to promote their business interests in the country by spreading awareness of their products and exploring opportunities for setting up a more permanent presence. A liaison office also requires registration with the Registrar of Companies.

A liaison office in India is permitted 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

Project office

A foreign corporation which has secured a contract from an Indian company to execute a project in India may establish a project office in India without obtaining prior permission from RBI. However, the exchange control norms prescribe certain requirements in this regard.

Like a branch office, a project office is also treated as an extension of the foreign corporation in India and taxed at the rate applicable to foreign corporations.

Funding of Indian businesses

Share capital

The Companies Act, 1956 permits companies to issue only two kinds of share capital viz.:

- Preference share capital (preferred stock)
- Equity share capital (common stock) with/without voting rights

The restriction is not applicable to private companies, which are not subsidiaries of a public company. The nominal value of shares is not prescribed by the Companies Act, 1956 but it is normally INR 10 per share for equity shares and INR100 per share for preference shares.

The issue of capital to the public is governed by guidelines issued by SEBI, the body that regulates and oversees the functioning of the Indian stock markets.

Shares can be issued at par, at a premium, or at a discount by existing companies. A company has to obtain permission from regulatory authorities before issuing shares at a discount under specific circumstances.

The amount of capital a company can issue is limited by the authorised capital specified in its memorandum of association. A company can increase its authorised capital only if permitted by its articles of association.

A company can increase its subscribed capital by offering a rights issue, the only condition being that the shares have to be offered to the existing shareholders first, in proportion to their shareholding. A company can also increase its subscribed capital by issuing bonus shares out of its retained earnings available for paying dividends.

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. However, the Act strictly forbids debentures from carrying voting rights and prescribes the manner and the source from which deposits can be invited and accepted. Debentures can be redeemable or perpetual, bearer or registered and convertible or non-convertible.

Issue of shares and debentures

Shares can be issued to the public as long as the company complies with SEBI disclosure requirements while issuing a prospectus. The prospectus has to be approved by the stock exchange before it is filed with the Registrar of Companies. It is also scrutinised by SEBI.

Director Identification Number ('DIN')

DIN is a unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company. DIN is now mandatory for any individual who is an existing director of a company or intends to be appointed as director of any company.

The process of allotment of DIN is simplified by the Ministry of Corporate Affairs, and the process can be performed online followed by the filing of manual copies within the specified days.

E-filing and digital signature

The Ministry of Companies Act has amended the provisions of filing of documents, and has made it mandatory to be filed through electronic media. It also provides authentication of forms by authorized signatories using digital signatures issued by authorized agents. Thus, the above amendment has resulted in making it mandatory for all the companies to file every form/document with the Ministry of Corporate Affairs with digital signatures, thereby completely replacing manual signatures from the filing process.

Sole proprietorships

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

- The most important feature is the ease of formation because it does not require elaborate legal formalities. No agreement is to be made and registration of the firm is also not essential. However, the owner may be required to obtain a license specific to the line of business from the local administration
- The owner has complete control over all the aspects of his business, and it is he who takes all the decisions though he may engage the services of a few others to carry out the day-to-day activities
- The owner alone enjoys the benefits or profits of the business and he alone bears the losses.
- The firm has no legal existence separate from its owner
- The liability of the proprietor is unlimited i.e. it extends beyond the capital invested in the firm

Partnerships

A partnership is defined as a relation between two or more persons who have agreed to share the profits of a business carried on by all of 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 are:

- A partnership is easy to form as no cumbersome legal formalities are involved. Its registration is also not essential. However, if the firm is not registered, it will be deprived of certain legal benefits. The Registrar of Firms is responsible for registering partnership firms
- The minimum number of partners must be two, while the maximum number can be 10 in case of banking business and 20 in all other types of business
- The firm has no separate legal existence of its own i.e. the firm and the partners are one and the same in the eyes of law
- In the absence of any agreement to the contrary, all 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 firm
- 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 the debts of the firm, the creditors can recover their loans from the personal property of the individual partners.
- Restrictions are there on the transfer of interest i.e. none of the partners can transfer his interest in the firm to any person (except to the existing partners) without the unanimous consent of all other partners
- The firm has a limited span of life i.e. legally, the firm must be dissolved on the retirement, lunacy, bankruptcy, or death of any partner.

Limited liability partnership

An LLP is a body corporate having perpetual succession and a legal personality of its own. It shall have at least two partners but there is no limit on the maximum number of partners that it can have. If at any time the number of partners of an LLP falls below two and the business is carried on for more than six months, a person who is a partner of the LLP during the time that it so carries on business after those six months and is cognizant of this fact shall be liable jointly and severally with the LLP for the obligations of the LLP incurred during that period.

Any individual or body corporate may be a partner in an LLP. An LLP being a body corporate, the law relating to partnerships is generally not applicable to a limited liability partnership. Similarly, any change in the partners does not affect the existence, rights and liabilities of the LLP.

Every LLP shall ensure that it has a manager who is an individual and is resident in India. The role of a manager is to perform the administrative and filing duties of the LLP.

C.2 Mergers and acquisitions

The SEBI (Substantial Acquisition of Shares and Takeovers) Guidelines, 1997 (the Takeover Code) seek to protect the interests of small investors and also strengthen the regulatory framework for takeovers. The Takeover Code essentially gets triggered if the acquisition of the shares of a company listed on a stock exchange (together with the shares already held) results in a holding of 15% or more of the voting capital or a change in management control.

Reorganisations and mergers

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

Demerger

A demerger is a reorganisation tool that is increasingly being employed by companies to segregate their core and non-core businesses. Similar to mergers, demergers are also a court-driven process, which require sanction by the jurisdictional High Court/NCLT along with shareholders and creditors approval.

Slump sale

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

Buy-back of shares

The Companies Act, 1956 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 the same is sanctioned in the company's board meeting. A company may also buy-back 25% of the company's paid-up capital and free reserves provided the buy-back is sanctioned by a special resolution of shareholders.

The Companies Act, 1956 also prescribes certain conditions relating to reserves, bar on the company to issue further shares of the same class for a period of six months, and debt equity ratios, among other things for a company to be eligible for undertaking a buy-back of shares. The procedure for affecting a buy-back is relatively simple and does not involve a court process. Companies listed on a stock exchange in India are subject to the guidelines prescribed by SEBI in this regard.

Capital reduction

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

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

C.3 Taxes on corporate income and gains

India has a well-developed tax structure with the authority to levy taxes divided between the central and the state Governments. The Central Government levies direct taxes—personal income tax, wealth tax, corporate tax, and indirect taxes—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.

Administration

The power of administration, supervision, and control in the area of direct taxes lies with the Central Board of Direct Taxes (CBDT). The CBDT works under the MoF and exercises significant influence over the working of direct tax laws of the country, and to ensure effective discharge of executive and administrative functions.

Further, the Central Board of Excise and Customs, under the Ministry of Finance (MoF), deals with the formulation of policy concerning levy and collection of customs, central excise duties, and service tax.

The Indian fiscal year runs from 1 April of a year to 31 March of the subsequent year. A corporation's tax year also ends on the same date. All corporations are required to file tax returns by 31 October and must file the same even in the event of loss. Non-resident corporations must file Indian income tax returns if they carry on business in India or have any office in India or earn income from any Indian source, asset, and property or business connection.

All corporations with Indian taxable income must register with their respective jurisdictional tax authorities. Corporate tax liability is required to be estimated and discharged by way of advance tax in four instalments on 15 June, 15 September, 15 December, and 15 March.

The filing of late returns and delay in payment/shortfall in taxes are liable to penal interest at prescribed rates. Interest is imposed on the balance of unpaid tax due, and on the underpayment of advance tax due.

Corporate income tax

For Indian income tax purposes, a corporation's income essentially comprises income from business or property, capital gains realised on any disposition of the corporation's capital assets, and 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 essentially 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 situated entirely in India.

If a tax treaty exists between India and the country of residence of the taxpayer, the provisions of the Act or the tax treaty, whichever is more beneficial, will apply. Accordingly, the taxability of a non-resident in India may be restricted or modified and lower rates may apply. In general, India's tax treaties provide that 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.

Rates of corporate tax

Normal Rate

Domestic corporations are subject to tax at a basic rate of 30% enhanced by a 10% surcharge. Foreign corporations are subject to a basic tax rate of 40% enhanced by a 2.5% surcharge. Further, the tax payable by all the corporations is enhanced by an education cess at the rate of 3% on the tax payable, inclusive of surcharge.

Corporations are subject to wealth tax at the rate of 1%, if the net wealth exceeds approximately USD 40,000 (equivalent of INR 1.5 million).

Special rates for non-resident corporations

Royalty or fees for technical services: Non-resident corporations are taxed in the following manner:

Received from the Government or from Indian corporations under agreements that are approved by the Government or which are in accordance with the Industrial Policy (refer notes 1	
‣ In pursuance of agreements made after 31 May 1997 but before 1 June 2005	Taxable at 20% on a gross basis
‣ In pursuance of agreements made on or after 1 June 2005	Taxable at 10% on a gross basis

Notes :

1. *Royalties and fees for technical services earned in pursuance of*

agreements made after 31 March 2003 that are effectively connected with the foreign corporation's permanent establishment in India are taxed at the rate of 40% (plus surcharge and education cess) on a net income basis.

2. *Royalties and fees for technical services (not effectively connected with the foreign corporation's permanent establishment in India) that are not received from the Government or where received from Indian corporations under agreements not approved by the Government or which are not in accordance with the industrial policy are also taxed at the rate of 40% (exclusive of surcharge and education cess) on a net income basis.*

The above rates may be subject to more beneficial provisions contained in a tax treaty entered into between India and the country in which the taxpayer is resident.

All the tax rates mentioned above, excluding the rates prescribed under the relevant treaty, must be enhanced by a surcharge of 2.5%. Further, the tax payable by all the corporations should be enhanced by an education cess at the rate of 3% on the tax payable inclusive of surcharge.

Dividend income: Dividend income distributed by domestic corporations is exempt from tax in the hands of the recipients. However, such corporations are required to pay DDT at the rate of 16.995% (including 10% surcharge and 3% education cess thereon) on dividends declared, distributed or paid by them.

Interest on foreign-currency loans: Non-resident corporations earning interest on foreign-currency loans extended to Indian business enterprises or to the Government of India are taxed at the rate of 20% on the gross amount of interest.

Overseas financial organisations: Specified overseas financial organisations earning 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 on the transfer of such units are also taxed at the rate of 10%. However, if the transaction is liable to securities transaction tax (STT), then no tax is leviable on long-term capital gains, whereas short-term capital gains are subject to taxes at the rate of 10%.

FIIs are taxed at the rate of 10% on long-term capital gains, and at the rate of 30% on short-term capital gains arising from the transfer of securities (other than units). However, if the transaction is liable to STT, the long-term capital gains may be exempt from tax and short-term capital gain may be liable to tax at 10%.

The above rates (excluding DDT) may be subject to more beneficial provisions contained in the tax treaty between India and the country in which the taxpayer is resident. All the tax rates mentioned above, excluding the rates prescribed under the relevant treaty, must be enhanced by a surcharge of 2.5% and an education cess at the rate of 3% on the tax payable inclusive of surcharge.

For a sample corporate tax calculation, see Appendix 4.

Minimum Alternate Tax (MAT)

The Indian tax law provides for MAT to be paid by corporations on the basis of profits disclosed in the financial statements. Corporations must pay 10% (plus applicable surcharge of 10% for domestic companies and 2.5% for foreign companies and 3% education cess thereon for both) of book profits as tax, if the tax payable as per regular tax provisions is less than 10% of its book profits. Book profits for this purpose are computed by making prescribed adjustments to the net profit disclosed by the corporations in their financial statements.

MAT paid by corporations for income years beginning on or after 1 April 2005 may be carried forward for seven years and offset against income tax payable under the normal provisions of the Income Tax Act, 1961. The maximum amount that can be set off against regular income tax is equal to the difference between the tax payable on the total income as computed under the Income Tax Act and the tax that would have been payable under the MAT provisions for that year.

A report from a chartered accountant certifying the amount of book profits must be filed together with the corporate tax return.

C.4 Corporate taxes at a glance

Corporate income tax for domestic companies (%)	30 (a)
Dividend distribution tax (%)	15 (a)
Long-term capital gains tax (%)	20 (a) (d) (e)
Tax on foreign corporations tax (%)	40 (a)
Withholding tax (%) (a)	
▸ Dividends	
Paid to domestic companies	0
Paid to foreign companies	0
▸ Interest	
Paid to domestic companies	20(a)
Paid to foreign companies	20(b)
▸ Royalties from patents, know-how, etc.	
Paid to domestic companies	10 (a)
Paid to foreign companies	20 / 10 (a)
▸ Technical services fees	
Paid to domestic companies	10 (a)
Paid to foreign companies	20 / 10 (a)
Branch remittance tax	0
Fringe benefit tax	30% of value of fringe benefits (f)
Net operating losses (years)	
Carry back	0
Carry forward	8 (c)

(a) For the income year ending 31 March 2008, the rates listed above for corporate income tax, including capital gains tax, DDT and withholding taxes are increased by a surcharge equal to 10% of such taxes in case of resident corporations. In case of foreign corporations and branches, income tax, capital gains and the withholding taxes are increased by a surcharge equal to 2.5% of such taxes. In addition, the tax payable by corporations is increased by an education cess, which is imposed at a rate of 3% of the tax payable, inclusive of the surcharge.

(b) This rate applies only to interest from foreign currency loans. Other interest is subject to tax at a rate of 42.23% (including 2.5% surcharge and 3% education cess).

(c) Unabsorbed depreciation may be carried forward indefinitely to offset taxable profits in subsequent years. Unabsorbed business loss may be carried forward to offset profits of eight subsequent assessment years.

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

(e) Long-term capital gain arising from the transfer of equity shares or the units of an equity-oriented fund on any recognised stock exchange in India or from the transfer of units of an equity-oriented fund to the mutual fund, will be exempt from tax if STT is payable on such transactions. Where long-term capital gain arises on the sale of listed securities/units outside the stock exchange, the gains are taxable at 10% (without indexation benefit).

(f) Fringe benefit tax of 30% (plus education cess and applicable surcharge) on the value of fringe benefits is levied on the employer in respect of the fringe benefits provided/deemed to be provided to the employees during any financial year commencing from 1 April 2005.

Tax incentives

The Government of India has been extending a host of incentives and concessions to eligible corporations in certain industries. Broadly, the tax incentives include tax holidays for corporate profits, accelerated depreciation allowances, and deductibility of certain expenses subject to the fulfillment of prescribed conditions. Some of the key direct tax incentives have been outlined in the following paragraphs.

Profits from new undertakings

New undertakings are defined as undertakings that are formed by means other than the division or reconstruction of a business already in existence or the transfer to a new business of machinery or plant previously used in India for another purpose. The following table sets forth the available tax exemptions.

Quantum of exemption		
Type of business activities	**Percentage of profit**	**Period**
Undertakings engaged in the generation or generation and distribution of power or laying a network of new transmission or distribution lines or carrying out substantial renovation and modernisation of the existing transmission or distribution lines (a) (c)	100	10 years
Undertaking set up for reconstruction or revival of a power generation plant where the undertaking begins to generate or transmit or distribute power before 31 March 2008	100	10 years
Companies (or consortium of companies) carrying on the business of developing or maintaining and operating or developing, operating, and maintaining new infrastructure facilities (b)	100	10 years
Undertakings which develop, develop and operate, or maintain, and operate an industrial park on or before 31 March 2009 (a)	100	10 years

Quantum of exemption		
Type of business activities	**Percentage of profit**	**Period**
Undertakings located in areas other than the North Eastern region of India, that begin commercial production of mineral oil or refining of mineral oil	100	7 years
Undertakings manufacturing or producing any articles or things, not being specified articles or things in specified zones areas and undertakes substantial expansion in Sikkim, Himachal Pradesh, Uttaranchal and the North-Eastern states before 1 April 2012 (d) (e)	100	10 years
Undertakings manufacturing or producing any specified articles or things or commencing any specified operations and undertakes substantial expansion in Sikkim, Uttaranchal and the North-Eastern states before 1 April 2012 (d) (e)	100	10 years

Quantum of exemption		
Type of business activities	**Percentage of profit**	**Period**
Undertakings engaged in the integrated business of handling, storing, and transporting food grains	100 30	5 years 5 years
Undertakings engaged in collecting and processing or treating of biodegradable waste for generating power; producing bio-fertilisers,bio-pesticides or other biological agents; producing biogas; or making pallets or briquettes for fuel or organic manure	100	5 years
Undertakings engaged in the business of processing, preserving and packaging of fruits and vegetables	100 30	5 years 5 years
Undertakings engaged in operating and maintaining hospitals in rural areas constructed before 31 March 2008	100	5 years
Undertaking engaged in laying and operating a cross-country natural gas distribution network, including pipelines and storage facilities being an integral part of such a network approved by the Petroleum and Natural Gas Regulatory Board (a)	100	10 years

Quantum of exemption		
Type of business activities	**Percentage of profit**	**Period**
Undertaking engaged in the hotel business, or in the business of building, owning, and operating a convention centre in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar, and Ghaziabad (f)	100	5 years
Undertaking, manufacturing, or producing articles or things that are not specified, or undertaking substantial expansion or carrying eligible business in the North-Eastern States.	100	10 years

(a) The exemption is available for a continuous period of 10 years falling within the period of the initial 15 years.

(b) The exemption is available for a period of 10 years falling within the period of the initial 20 years. However, in the case of ports, airports, inland ports, and navigation channels in the sea, inland waterways; the exemption may be available for 10 years falling within the period of the initial 15 years.

(c) Substantial renovation/modernisation, if undertaken, should be completed by 31 March 2010. Generation and/or transmission and/or distribution should commence before 31 March 2010.

(d) Profits derived from substantial expansion undertaken by the existing undertaking or enterprise also eligible for exemption.

(e) 30% for the last five years for Himachal Pradesh and Uttaranchal.

(f) Hotels should be constructed and functioning; convention centres should be constructed during the period beginning from 1 April 2007 to 31 March 2010.

A tax deduction equal to 100% of the profits derived from the export of articles, things or computer software by the following types of undertakings: units located in FTZs, HTPs/STPs SEZs (established before 31 March 2005) and 100% EOUs. The deduction is calculated by applying to the taxable income the ratio of export turnover to total turnover and it is available up to the income year 2008–09. However, FTZs, HTPs/ STPs would be subject to MAT.

Undertakings established in SEZs

Nature of corporate tax incentive

- Profits derived by undertakings set up in SEZs from the export of articles, things, or computer software are allowed as a deduction from the computation of taxable income
- No liability for MAT on the profits derived by the undertakings set up in SEZs from exports
- Undertakings set up in SEZs which provide ITES also qualify for the incentive

Conditions for availing the tax incentive

- The undertaking must commence manufacture or production of articles or things or computer software in a SEZ
- There must be export of such articles, things, or computer software
- The sale proceeds of the articles, things, or computer software exported out of India are received in or brought into India in convertible foreign exchange, within a period of six months from the end of the previous year or within such extended period as may be allowed
- The undertaking is not formed by the splitting up or the reconstruction of a business already in existence
- The undertaking is not formed by the transfer to a new business of machinery or plant previously used for any purpose. However, if any machinery or plant or any part thereof previously used for any purpose is transferred to a new business, and the total value of the machinery or plant or part so transferred does not exceed

20% of the total value of the machinery or plant used in the business, then the aforesaid condition shall be deemed to have been complied with. Any machinery or plant used outside India by any other person, provided it was never used in India, or it has been imported into India from any country outside India and no depreciation has been claimed on the same in India, shall not be regarded as machinery or plant previously used for any purpose

- The assessee should furnish a report from a chartered accountant certifying the deduction

Computation of profits from export

The formula for the computation of profits derived from exports is as follows:

= Profits of the business of the undertaking * export turnover of the undertaking/total turnover of the business

Amount of deduction

Percentage of profits derived from export	Undertakings established in SEZs on or after 1 April 2002 but before 31 March 312005	Undertakings established in SEZs on or after 1 April 2005 under SEZA
100%	For the first five years starting from the year in which manufacture or production commences	For the first five years starting from the year in which manufacture or production commences
50%	For the next two years	For the next five years
50% (subject to fulfillment of reinvestment conditions*)	For the next two years	For the next five years

* These conditions require transferring of the profits to a separate reserve account, which is to be utilised for capital expansion.

SEZ developers

Tax holiday for SEZ developers and co- developers on or after 1 April 2005 (under the SEZA)

100% deduction in respect of profits and gains derived by an undertaking or an enterprise from any business of developing a SEZ for a period of 10 consecutive assessment years, out of 15 years from the year in which SEZ is notified by the Central Government. Further, various other fiscal incentives have also been prescribed under the SEZA.

Other Corporate Tax Incentives:

- Exemption from Minimum Alternate Tax payable by developer and co-developer
- Exemption from Dividend Distribution Tax on profits distributed by an undertaking or an enterprise engaged in developing or developing and operating or developing, operating, and maintaining a SEZ.

Exemption from capital gains

Exemption from capital gains tax on sale of fixed assets (subject to fulfillment of use condition) will be granted to industrial undertakings, shifting base from urban areas or any other area to an SEZ

Exemption of rentals on lease of aircraft/aircraft engines

The lease rentals for an aircraft or aircraft engine paid by an Indian company engaged in the operation of aircraft to the Government of a foreign state or a foreign enterprise are exempt from income tax if the agreement was entered into before 1 April 2007. However, the agreement should not have been entered into between 1 April 1997 and 31 March 1999.

The income tax borne by Indian companies engaged in the operation of aircraft on lease rentals paid to the Government of a foreign state or a foreign enterprise is exempt from grossing-up requirements if:

- the lease rentals are paid in respect of an agreement entered into between 1 April 1997 and 31 March 1999; and
- the agreement is approved by the Central Government

Capital gains and losses

Proceeds in excess of cost from disposition of capital assets are generally taxed as capital gains.

Capital assets include all kinds of property except stock-in-trade, raw materials, and consumables used in business or profession, personal effects (except jewellery), agricultural land and notified gold bonds.

General provisions

Long-term capital gains: Profits earned from the transfer of long-term capital assets are referred to as long-term capital gains. Long-term capital assets are assets held for more than three years and the following assets held for more than one year:

- Shares.
- Other securities listed on a recognised stock exchange in India.
- 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% (plus applicable surcharge, education cess and secondary and higher education cess). The cost of the capital asset is adjusted for inflation (indexation) to arrive at the indexed cost (the benefit of indexation is not available to non-residents), which is allowed as a deduction while computing such long-term capital gains. However, no adjustment is allowed on account of inflation for computing the cost of bonds and debentures.

Gains derived from the transfer of the units of UTI, mutual funds, or listed securities are taxed at the rate of 10% (plus applicable surcharge, education cess and secondary and higher education cess), without allowing for indexation adjustments or at the rate of 20% (plus applicable surcharge, education cess and secondary and higher education cess) with indexation benefits.

Long-term capital gain arising on the transfer of equity shares or units of an equity-oriented fund on any recognised stock exchange in India or from the transfer of the units of an equity-oriented fund to the mutual fund, will be exempt from tax if the transaction is entered on or after date on which STT comes into force, i.e. 1 October 2004 and STT has been paid on such a 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 assessee shall be treated as cost of the asset. For computing 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 annual return of income being filed on or before the due date), but may be offset only against taxable long-term capital gains.

Long-term capital gains is exempted from tax if investment is made as prescribed by the law in specified modes, including investment in residential house property, and specified bonds of different 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 or units of an equity-oriented fund on any recognised stock exchange in India or from transfer of units of an equity-oriented fund to the mutual fund on or after the date on which STT comes into force, and STT has been paid on such transactions will be taxable at a lower rate of 10% (plus applicable surcharge and education cess and secondary and higher education cess thereon).

Short-term capital losses are allowed to be carried forward for eight consecutive years (subject to filing of annual return of income on or before the due date) and may be offset only 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 classes of assets (including additions during the year) of which the assets form a part. If the sales proceeds exceed the declining-balance value on the sale of the entire block, the excess is treated as short-term capital gain. Else, no capital gain results from the sales of such assets even if the sales proceeds for a particular asset are greater than the cost of such an asset. If all the assets forming part of the block is sold, then the excess of declining balance (including additions during the year) over the sale amount would be treated as short-term capital loss.

Certain short term capital gains are exempted from tax if investments are made as specified by the law in specified modes.

Special provisions relating to capital gains

Domestic tax law contains a special provision for the taxation of capital gains earned by non-residents from the transfer of shares and debentures of an Indian corporation acquired by utilizing foreign currency. Any gain (short or long-term) arising is reconverted into Indian rupees at the exchange rate prevailing on the date of transfer to arrive at the taxable capital gains.

This special provision acts as a measure to mitigate the effect of any fluctuation in the exchange rates of foreign currency on the capital gains earned by the non-residents. No indexation benefits are extended for calculating capital gains in such cases.

Amalgamations, demergers and slump sale

Amalgamations: Amalgamations are tax neutral, subject to the satisfaction of prescribed conditions. In 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 company is treated as its income for the year in which the failure to fulfil any of the conditions stated above occurs. The amalgamation procedure involves a court process.

Demergers: The demerger of businesses by existing companies is tax neutral, subject to the fulfilment of prescribed conditions. The accumulated losses and depreciation of the demerged company attributable to the resulting company will qualify to be carried forward and set off by the resulting company, subject to satisfaction of the prescribed conditions. The demerger procedure involves a court process.

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 consideration received over the net worth of the undertaking. The net worth is the difference between the value of the 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 the liabilities of such an undertaking or division.

Foreign tax relief

Tax treaties entered into by India and several other countries govern foreign tax relief for the avoidance of double taxation. If no such agreement exists, resident corporations may claim a foreign tax credit for the foreign tax paid by them. The amount of credit granted is the lower of the Indian tax payable on the income that is subject to double taxation and the foreign tax discharged.

For a list of tax rates prescribed under various treaties, see Appendix 5.

C.5 Determination of taxable income

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

Deductions

Deduction is allowed only for business-related revenue expenses, while capital expenditure (other than those specified) and personal expenses are not deductible.

Inventories

Inventories should be valued at the lower of the cost or net realizable value.

Provisions

In general, ad hoc provisions are not tax deductible. Provisions for duties, taxes (other than income tax and wealth tax), bonuses, leave salary, and interest on specified loans are deductible on accrual basis, provided the corresponding payments are discharged before the due date for filing the return of income (ROI) or else 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 is available to banks and financial institutions for non-performing assets.

Redundancy and 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 filing the ROI, or else deduction is allowed in the year of actual payment.

Depreciation and amortization allowances

Depreciation or amortization included in the financial statements is not deductible. Except for undertakings engaged in the generation or the generation and distribution of power, depreciation for tax purposes must be calculated on the block of assets as per the declining-balance method at the prescribed rates. Allowance for depreciation is available only after the asset is ready for use for its business purposes. In the event, assets are acquired during the year and put to use for a period of less than 180 days, thus only half of the admissible depreciation is allowable.

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

Tax depreciation rates (declining-balance method):

Assets	Percent
Plant and machinery	15*
Cars other than those used in the business of running them on hire	15
Computers (including software)	60
Purely temporary erections	100
Furniture and fittings, including electrical fittings	10
Buses, lorries and taxies used in the business of running them on hire	30
Ships	20
Residential buildings	5

Assets	Percent
Buildings other than above	10
Intangible assets (such as know-how, patents, copyrights trademarks, licenses, franchises or any other business or commercial right of similar nature form a separate block of assets)	25

* Accelerated depreciation equal to 20% of the actual cost is allowed with respect to plant and machinery (other than ships or aircraft) acquired or installed after 31 March 2005.

Corporations engaged in generation or generation and distribution of power have the option of claiming depreciation on a straight-line basis.

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 in respect of capital borrowed for the purposes of business.

Restriction on payments to residents and non-residents

In order to enforce the tax-withholding provisions, certain payments on which tax has not been withheld or deposited as per the law are allowed as deductions in the year in which the taxes withheld are deposited.

Foreign exchange losses

Foreign exchange fluctuations are considered in computing taxable income provided they are on revenue account. Realized exchange fluctuations on the liability in respect of assets acquired outside India can be adjusted with its declining-balance value.

Relief for losses

Business losses, other than unabsorbed depreciation may be carried forward to be set off against taxable business income derived for 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 ownership test to carry forward business losses.

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

Dividend Distribution Tax (DDT)

Dividends paid by resident companies are exempt from tax in the hands of the recipients. However, resident companies must pay DDT at a rate of 16.995% (including a 10% surcharge and a 3% education cess) on dividends declared, distributed or paid by them. Such tax paid is a non-deductible expense.

Fringe Benefit Tax (FBT)

FBT has been introduced in India from the income year beginning 1 April 2005. It is payable by a covered employer on the benefits provided or deemed to have been provided to the past and present employees. The benefit need not be provided directly by the employer for FBT to apply.

The FBT legislation has identified an exhaustive list of expenses, which are deemed to be fringe benefits to the extent of 20% or 50% of the cost incurred or payment made by the employer. A concessional rate of 5% has also been prescribed in select instances. Payment of FBT is not allowed as a deductible expense from the taxable income. Further, FBT is payable irrespective of whether the employer has taxable income in India or not.

FBT is also levied on the employer in respect of any allotment or transfer of any specified securities or sweat equity shares to its employees (including any former employees). FBT is payable on the difference between the fair market value (FMV) of the security on the date of vesting and the amount recovered from the employee. The FMV is computed as per the method prescribed by the CBDT.

In case of a domestic company, FBT is payable at a rate of 33.99% (including the 10% surcharge and the 3% education cess). However, in case of a foreign company, FBT is payable at a rate of 31.6725% (including the 2.5% surcharge and the 3% education cess).

The circular issued by CBDT, has clarified that no segregation of expenses between employees and non-employees will be allowed for computing FBT. Further, it has also been clarified that foreign companies would be liable to pay FBT only if they have employees based in India, and in which case FBT would be payable only on expenses attributable to Indian operations.

Furthermore, the circular states that FBT is allowable deduction for computing book profits for the purpose of computing MAT.

Deemed basis of taxation

Income derived from providing services, facilities, or plant and machinery with respect to prospecting, extraction, or production of mineral oil, from the operation of ships or aircrafts and also from the business of civil construction in certain turnkey power projects by non-residents are taxed on a deemed-profit basis.

Tonnage tax scheme

An optional tonnage tax scheme has been introduced for the Indian shipping industry on or from 1 April 2004, which taxes the income on a deemed profits basis.

Oil and insurance companies have a separate code of taxation.

Related companies

Transfer Pricing

Comprehensive transfer-pricing regulations (TPRs) have been introduced, effective from 1 April 2001 with the objective of preventing MNCs from manipulating prices in intra-group transactions such that the profits are not shifted outside India.

Under TPRs, international transactions 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. The TPRs prescribe for the application of the most appropriate among the prescribed methods. The following methods have been prescribed: comfortable uncontrolled price, resale price, cost plus, profit split, and transaction net margin method. However, TPRs do not prescribe for a hierarchy of methods.

TPRs also require persons entering into international transactions to maintain prescribed documents and information, and to obtain and furnish to the revenue authorities an accountant's report containing prescribed details regarding the international transactions.

Stringent penalties have been prescribed for non-compliance with the procedural requirements and for understatement of profits.

Advance Pricing Arrangements (APAs)

APAs are currently not available in India.

Controlled foreign corporations

India does not currently contain any provisions in relation to controlled foreign corporations.

Consolidated Returns

India does not provide for the consolidation of income or common assessment of group companies. Each company, including a wholly-owned subsidiary, is assessed separately.

C.6 Other significant taxes

Banking Cash Transaction Tax (BCTT)

A new levy in the form of BCTT came into force on 1 June 2005. BCTT is payable at a rate of 0.1% on the value of every taxable banking transaction. In case of a company, 'taxable banking transaction' includes a transaction involving cash withdrawal or encashment of one or more term deposits on any single day exceeding approximately USD 2,500. No BCTT is charged in case the amount of term deposits is credited to any account with the bank. The concerned scheduled bank is liable to collect and deposit BCTT on a monthly basis (within 15 days from the end of the relevant calendar month). Further, the concerned scheduled bank is also liable to furnish an annual return of BCTT in the prescribed format, which could be subject to assessment by the tax authorities.

Securities Transaction Tax (STT)

STT is payable on transactions in equity shares, derivatives, and units of an equity-oriented fund entered in a recognised stock exchange or on the sale of units of any equity mutual fund to the mutual fund.

Nature of transaction	Amount of STT
Delivery-based transactions in equity shares or units of an equity-oriented fund	Buyer and seller each to pay 0.125%
Sale of units of an equity-oriented fund to the mutual fund	Seller to pay 0.25%
Non-delivery based transactions in equity shares or units of an equity-oriented fund	Seller to pay 0.025%

Nature of transaction	Amount of STT
Derivatives (futures and options)	Seller to pay 0.017%

The value for the taxable securities transaction (other than derivatives) would be the price at which the securities are purchased or sold. However, the value in relation to derivatives being futures would be the value at which futures are traded and in the case of options, the aggregate of strike price and option premium.

The concerned stock exchange is liable to collect and deposit STT on a monthly basis (within 17 days of the relevant calendar month). Further, the concerned stock exchange is also liable to furnish an annual return of STT in the prescribed format, which could be subject to assessment by the tax authorities.

Customs duty

Customs duty is levied on the import of goods into India and comprises the following duties:

- Basic customs duty (BCD): Most of the goods (non-agricultural) attract a BCD of 10%
- Additional duty equal to excise duty: Additional duty equal to the excise duty applicable on like goods manufactured in India. Most of the goods attract additional duty of 16.48%.
- Special Additional Duty (SAD): Additional duty of customs to countervail state taxes/VAT. SAD is levied at 4%.
- Education cess at 2% and Secondary and Higher Education Cess (SHEC) at 1% of the aggregate customs duties excluding SAD
- Other applicable cesses, including agriculture produce cess

On import of goods that attract BCD of 10% and additional duty of 16.48%, the effective rate of customs duty payable by the importer will be 34.13%.

There are various exemptions/ concessions available on the import of goods. These include advance authorization scheme for import of duty free inputs for manufacturing goods for export, import of capital goods at concessional rate under export promotion capital goods scheme, and benefits to specified projects, among other concessions.

The primary basis for the valuation of goods under the Indian customs law is the transaction value. Import of goods from a related party are scrutinised by Special Valuation Branch (SVB) for determining whether the transaction is at arm's length.

The Government of India has entered into a number of free trade agreements with trade partners, including Nepal, Thailand, Sri Lanka, Singapore, and SAARC countries to promote trade. Under these agreements, preferential tariff rates have been extended for certain identified goods.

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 16% plus an education cess at 2% and SHEC at 1% of the excise duty, making the effective duty exposure as at 16.48% i.e. excise duty of 16% and education cess (including SHEC) of 0.48%.

Excise duty is mostly levied on an ad valorem basis, expressed as a percentage of either 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 manufacture of these goods can be procured without payment of excise duty.

The Government has prescribed certain rules which allow manufacturers to take credit of specified duties, including excise duty, additional duty, SAD paid on input and capital goods, and service tax paid on input services used in manufacture of dutiable goods. The manufacturer can utilize such credit to pay the excise duty applicable on the goods manufactured.

Service tax

Service tax is applicable on the provision of specified services in India. It is also applicable on the import of such specified services. In this regard, import rules have been issued by the Government, which prescribe the criteria based on which a service would qualify as an import.

Service tax is applicable on more than 100 services, and is levied at a uniform rate of 12% of the value of service plus an education cess at 2% and SHEC at 1% of such service tax, making the effective tax exposure as at 12.36% i.e. service tax of 12% and education cess (including SHEC) of 0.36%.

The Government has prescribed rules for determining the value of taxable service.

The person providing the service collects service tax from the receiver, and is responsible for depositing it with the Government but when a service is imported, the importer of the service is responsible to deposit it with the Government.

On export of a service, no service tax is applicable subject to export conditions. The Government has issued rules that provide specific criteria based on which a particular service would qualify as an 'export'. In case of export of specified service, a mechanism has been provided, which prescribes the option to claim rebate/refund of excise duty/additional duty equal to excise duty/service tax paid on inputs/input services used in export of the service.

The provider of specified service can take credit of duties, including excise duty, additional duty equal to excise duty paid on input and capital goods, and service tax paid on input services used in provision of such service. The credit can be utilized to pay the output service tax liability. Credit of SAD is not available to offset output service tax liability.

Value Added Tax (VAT)/ Central Sales Tax(CST)

VAT is an intrastate multi-point tax system, and is levied on value added at each stage. Presently, all the states have replaced the 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% for silver, gold ornaments,
- 4% for agricultural and industrial inputs, IT products, capital goods, intangible goods i.e. patents and others, items of basic necessities, and
- 12.5% for other goods

Interstate sales continue to be liable to Central Sales Tax (CST), which is imposed by the Central Government and administered by the state Governments. Recently, the rate of CST has been reduced to 3% (from 4%) subject to the provision of declaration forms prescribed under the CST Act and applicable respective state VAT rate in case declaration is not provided. It is proposed that CST will be phased out over the next 2–3 years.

Full input tax credit is available in respect of VAT paid on locally procured goods, including capital goods other than the 'Negative List' of goods provided under respective state VAT laws. This can be set off against output tax liability, including CST, wherein input credit on capital goods is available on a staggered basis—over a period of 24 to 36 months.

Octroi/Entry tax

Octroi/Entry tax is levied on the entry of goods into a particular municipal/state jurisdiction for use, consumption, or sale within such jurisdiction. The rate of entry tax on different products may vary from state to state. Some states have abolished the entry tax legislations while in other states, entry tax paid is available as a set-off against the VAT payable on the sale of such goods (The constitutional validity of the entry tax has been challenged. The matter is pending before the Supreme Court for final decision).

Special Economic Zone (SEZ)

Under SEZ law, the developers, co-developers, and units established in SEZ have following fiscal and non fiscal incentives/benefits under central and state legislation.

- Exemption from payment of customs duty on import of goods,
- Exemption from any duty of excise on all goods,
- Exemption from levy of CST on inter-state purchases
- Exemption from levy of service tax on services received within SEZ, and
- Exemption from applicable state taxes and cess on purchases made within the state,

Introduction of Goods and Services Tax legislation (GST): Salient features are as follows:

- A comprehensive dual model GST legislation proposes to replace various central and state enactments, including existing local and central sales tax legislation.

Introduction of the Goods and Services Tax Act (GST): Salient features are as follows:

- Tax to be levied on the 'sale' of goods and services based on multistage consumption
- Federal level GST and state level GST proposed
- All goods and services to be taxed except those covered under a negative list
- Multiple rates for goods and common rate for services proposed
- All exports to be zero rated
- The central GST could be between 14–16% and state GST could be between 12–14%

C.7 Financial reporting and auditing

Sources of generally accepted accounting principles

The Accounting Standards Board of the Institute of Chartered Accountants of India (ICAI) issues the accounting standards to be followed by enterprises. All accounting standards issued to date are mandatory and companies are required to comply with these standards and disclose significant accounting policies in the preparation of their financial statements. ICAI also issues guidance notes and auditing and assurance standards, which are designed primarily to guide auditors on matters that may result during the course of their professional work.

Statutes/Bodies governing the reporting requirements

The ICAI, National Advisory Committee on Accounting Standards (NACAS), SEBI, the Companies Act, 1956 and the Income Tax Act, 1961, primarily govern the financial reporting requirements of companies in India. In addition, the Central Government, through special acts and orders, also governs the financial reporting requirements.

Sources of accounting standards

Indian accounting standards have been sourced from the International Accounting Standards (IAS), now renamed International Financial Reporting Standards (IFRS). However, it may be noted that there are several differences between the Indian accounting standards and IFRS.

Recently, the ICAI has published Concept Paper on Convergence with IFRS in India. India is yet to adopt IFRS. In the meeting of the Council of ICAI held in 2006, the Council expressed the view that IFRS may be adopted in toto at least for listed and large entities. The Accounting Standards Board accordingly set up a task force on convergence with IFRS. The ICAI has expressed the view that IFRS should be adopted for the public interest entities, including listed entities, banks and insurance entities, and large-sized entities from the accounting periods beginning on or after 1 April 2011.

Significant fundamental concepts

Accounting methodology

The fundamental accounting assumptions of going concern consistency and accrual of income and expenses need not be disclosed in the financial statements. Departures from these basic concepts, however, must be disclosed.

All significant accounting policies should be disclosed in one place in a separate statement or schedule to the financial statements. The effect of any material changes in accounting policies must be quantified and the reasons for such changes explained.

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

Change in method of accounting

Companies may change a method of accounting. A change can be made to comply with a statute or an accounting standard, or if it is felt that the change would result in a more appropriate presentation of the financial statements of the enterprise. The new method should be followed consistently. A description of the change and the reasons for it should be disclosed in the financial statements in the year of the change.

Disclosure, reporting, and filing requirements

Disclosure requirements

General Requirements — Financial statements should consist of the following items:

- Balance sheet
- Profit and loss account
- Notes to the financial statement
- Auditor's report

- Cash-flow statement (not required for small- and medium-sized enterprises)

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

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

Financial statements must be signed and dated by the secretary, 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 the books of account as required by law, and whether these books agree with the balance sheet and profit and loss account.

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

Interim financial reporting requirement of listed companies

Quarterly Financial Statement: Each listed company is required to announce unaudited financial results on a quarterly basis, within one month from the end of a quarter, in the specified format and announce the same in the newspapers and subject the results to limited review by the statutory auditors.

If the sum total of the first, second, third, and fourth quarterly results with respect to any item given in the format varies by 20% when compared with the audited results for the full year, the company must explain the reasons to the stock exchange.

Secretarial Audit: Issuer companies are to subject themselves to a secretarial audit to be undertaken by a qualified chartered accountant or a company secretary for the purposes of reconciliation of the total admitted capital with both 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 greater for public companies than for private companies. Significant documents that need to be filed are the annual return, balance sheet, profit and loss account, and 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, 1956.

Annual financial statements must be sent to all shareholders and debentures holders at least 21 days before the annual general meeting (AGM). Listed companies must send annual financial statements to their stock exchange. In addition, listed companies have to publish 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 after certain minimum amounts are transferred to the company's reserves. Further, payment of dividends is permitted out of the company's accumulated reserves subject to compliance with certain prescribed rules.

Dividends can be recommended only 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, three certified copies of the same must be filed with the Registrar of Companies within 30 days of adoption by the shareholders.

Requirement for different industries

The Government requires certain manufacturers to maintain cost accounts and may order an audit by a qualified cost auditor of the same.

Banking, electricity, and insurance companies are governed by special acts rather than the Companies Act, 1956.

Audit requirements

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

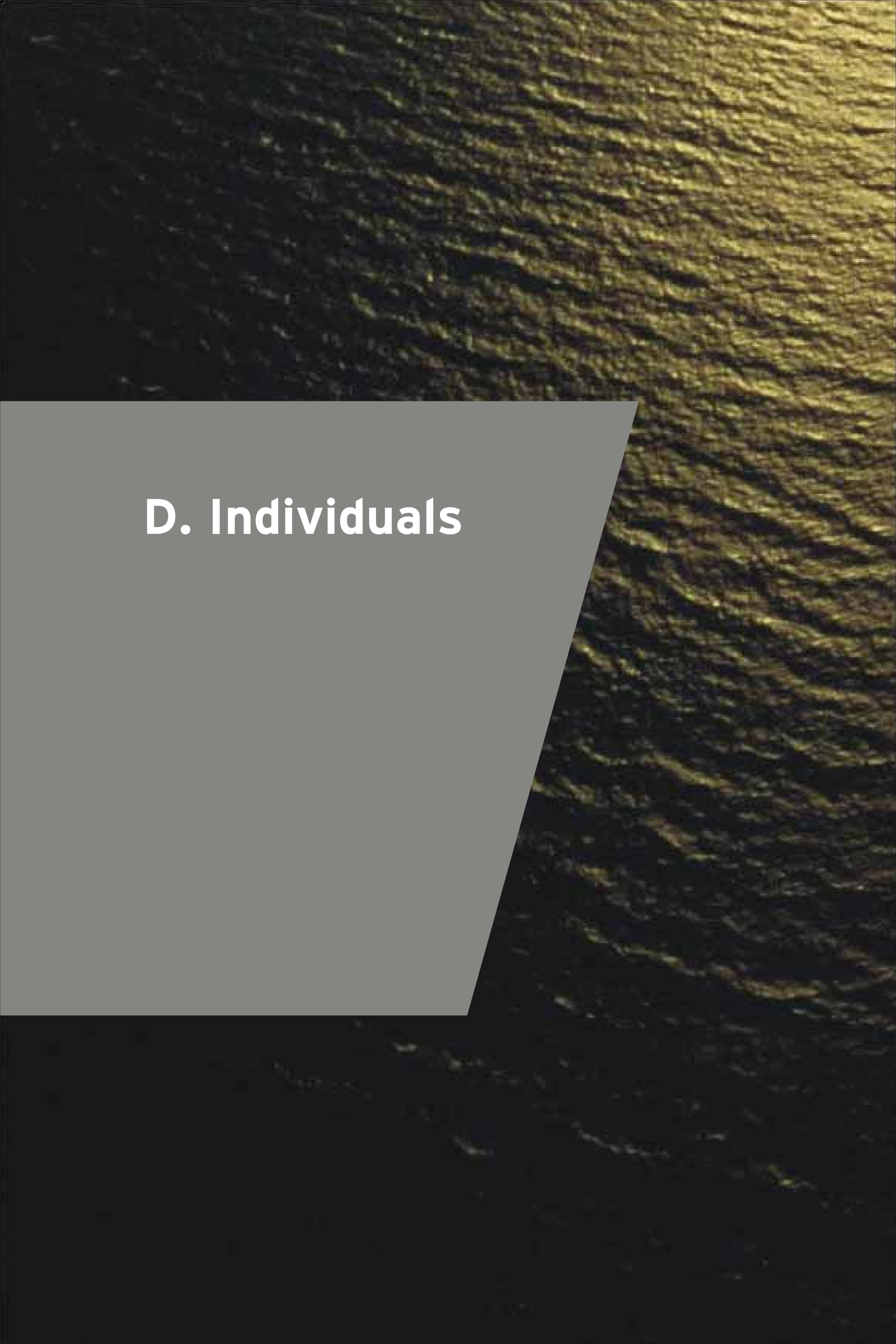
The first auditor of the company is usually appointed by the directors. The shareholders appoint subsequent auditors at every AGM and establish their remuneration. The Companies Act, 1956 sets out the matters on which the auditor has to report.

Every company with gross revenues in excess of USD 0.09 million must get its accounts audited under the Income Tax Act, 1961. As part of the audit process, the auditor also needs to certify information pertaining to FBT. The Companies Act, 1956 also grants the Government the powers to order other audits, including cost audits and investigations. In addition, every listed company or company with paid-up capital and reserves exceeding USD 0.11 million as at the commencement of the financial year, or average annual sales above USD 1.1 million for three consecutive financial years immediately preceding the financial year concerned, is required to have an appropriate internal audit system.

VAT audit

VAT legislation requires a VAT Audit certificate/report by a chartered accountant in a prescribed format. The format for each state is different, but generally contains 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 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.



D. Individuals

D. Individuals

D.1 Income tax

Liability for income tax

Liability for income tax is governed by the residential status of the individuals during the tax year.

Individuals are considered resident if they meet either of the following criteria:

- Presence in India for 182 days or more during the tax year (that is, the year in which income is earned; in India the tax year runs from 1 April to 31 March); or
- Presence in India for 60 days or more during the tax year and presence in India for at least 365 days in aggregate during the preceding four tax years (this condition may be extended to 182 days in certain cases)

Individuals who do not meet the above criteria are considered to be non-residents. Individuals are considered 'not ordinarily resident' if, in addition to meeting one of the above tests, they satisfy either of the following conditions:

- Non-resident in India in 9 out of the preceding 10 tax years; or
- Present in India for 729 days or less during the previous 7 tax years.

All employees are subject to tax, unless they are exempt under the Income Tax Act, 1961 or applicable tax treaties.

Scope of income liable to tax

The scope of income liable to tax according to the residential status has been depicted in the table below:

Residential Status	Scope of taxability
Resident	• Worldwide income
Resident and not ordinarily resident	• Indian-source income • Income deemed to accrue or arise in India

Residential Status	Scope of taxability
Non-resident	▶ Income received in India, or income received outside India arising from either a business controlled, or a profession established, in India ▶ Non-residents are taxed only on Indian-source income and on income received, accruing or arising in India*.

*Non-residents may also be taxed on income deemed to accrue or arise in India through a business connection, through or from any asset or source of income in India, or through the transfer of a capital asset situated in India (including a share in a company incorporated in India).

Types of income subject to tax in India

In general, all income received or accrued in India is subject to tax. The taxation of various types of income is described below. For a table outlining the taxability of income items, see Appendix 6.2.

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 residence 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 enterprise is not engaged in a trade or business in India;
- The employee does not stay in India for more than 90 days in the tax year; and
- The compensation paid is not claimed by the employer as a deduction from taxable income in India

Similar exemptions are available under tax treaties if the stay is less than 183 days, but conditions vary. Non-resident foreign citizens employed on foreign ships who stay in India no 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 (as listed below), may receive preferential tax treatment, subject to certain requirements.

Company-provided housing: The benefit of company-provided housing is taxed at the lower of 20% of salary (15% of salary in cities with a population of less than 400,000 as per the 2001 census) or the actual rent paid. However, where a recovery is made from the employee in respect of the accommodation provided, the housing is taxed either at 15% (in cities with a population more than 2,500,000 as per the 2001 population census) or 10% (in cities with a population of more than 1,000,000 as per the 2001 population census) or 7.5% (in other cities) or the actual rent paid as reduced by the amount recovered from the employee. Furniture and appliances provided by the employer are taxed at a rate of 10% of the cost if the employer owns the items, or the rent paid if the employer hires the items.

Hotel accommodation: If an employee is provided with hotel accommodation, tax is imposed on the lower of hotel charges paid by the employer or 24% of salary, reduced by any amount recovered from the employee, unless such accommodation is provided for up to 15 days on relocation. Such accommodation provided for 15 days in aggregate is considered as tax exempt.

Interest-free or low-interest loans: The benefit of interest-free loans or low-interest loans exceeding Rs. 20,000 to an employee or a member of an employee's household is taxable based on the purpose of the loan. The rate of interest is as notified by the State Bank of India.

Employer-paid taxes on non-monetary benefits: In general, the amount of tax paid by an employer on behalf of an employee is grossed up and taxed in the hands of the employee.

The following employer-paid items are not included in an employee's taxable compensation or included in taxable income at a lower value to the extent that they do not exceed specified limits and subject to prescribed conditions:

- Reimbursed medical expenses
- Contributions to Indian retirement benefit funds, including provident, gratuity, and superannuating funds

- Certain allowances, including house rent allowances and leave travel allowances. A bonus paid at the beginning or ending of employment is included in taxable salary income
- An education allowance provided by the employer to an employee to meet the cost of education of the employee's children is exempt up to INR 100 per month per child for up to two children. An allowance granted to an employee to meet the hostel expenditure (boarding and lodging expenses in residential schools and colleges) of the employee's children is exempt up to INR 300 per month per child for up to two children.

Fringe Benefit Tax introduced on 1 April 2005

Fringe Benefit Tax (FBT) is payable by employers. FBT is imposed at a rate of 30% (plus applicable surcharge and cess) on specified percentages of the following:

- Fringe benefits provided; and
- Deemed fringe benefits

Typically, deemed fringe benefits, include certain prescribed expenses that may result in personal benefits to employees. However, perquisites that are taxed in the employee's hands are not subject to FBT.

The specified percentages of fringe benefits and deemed fringe benefits subject to FBT are as follows:

Rates	Fringe benefits/Deemed fringe benefits
5%	▶ Tour and Travel (including foreign travel)
20%	▶ Entertainment ▶ Provision of hospitality of every kind by the employer to any person ▶ Conference (other than fee for participation by the employees in any conference) ▶ Sales promotion including publicity ▶ Employees' welfare

Rates	Fringe benefits/Deemed fringe benefits
	▶ Conveyance, tour and travel (including foreign travel) ▶ Use of hotel, boarding, and lodging facilities ▶ Repair, running (including fuel), maintenance of motor cars, and the amount of depreciation thereon ▶ Repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon ▶ Use of telephone (including mobile phone) other than expenditure on leased telephone lines ▶ Maintenance of any accommodation in the nature of guest house other than accommodation used for training purposes
50%	▶ Festival celebrations ▶ Use of health club and similar facilities ▶ Use of any other club facilities ▶ Gifts ▶ Scholarships
100%	▶ Free or concessional ticket provided by the employer for private journeys of his employees or their family members ▶ Any contribution by the employer to any approved superannuation fund for employees exceeding certain specified limited

In addition to the above, the benefit to the employees on allotment and transfer of employer provided stock incentive schemes was added on 1 April 2007 as a taxable fringe benefit (explained in detail below).

The Central Board of Direct Taxes has also issued a circular that is intended to assist in the interpretation of the law relating to FBT. The circular is organized in a frequently-asked-questions format (with 107 questions and answers).

Among other clarifications, the circular indicates that foreign companies with employees 'based in India' are subject to FBT. In addition, the circular clarifies the allocation of expenses subject to FBT with respect to international operations.

Taxation of employer-provided stock options

Prior to 1 April 2007, there were special rules for the taxation of Stock Incentive Schemes in India. Taxability was determined based on whether a plan was a 'qualified plan' or a 'non-qualified plan' as per the Indian Income Tax Law. Effective 1 April 2007, stock-based income has been brought under the ambit of the FBT. The rules governing the taxation of such income are summarised below:

- FBT will be levied on the employer in respect of any allotment or transfer (directly or indirectly) of any specified securities or sweat equity shares to its employees (including any former employee or employees)
- FBT will be payable on the difference between the fair market value of the securities on the date of vesting and the amount recovered from the employee
- Fair market value will be computed as per the method prescribed by the tax authorities in India.
- The amount subject to FBT will be considered as cost of acquisition for computing capital gains tax in the hands of the employee at the time of sale of such securities
- The employer can recover the FBT from the employees and the plans may be amended to allow recovery

Self-employment and business income

All self-employed individuals or those doing business in India are subject to tax. All income received or deemed to be received, or accrued or deemed to be accrued, in India is subject to tax.

A resident's worldwide income is taxable. Persons who are 'not ordinarily resident' and non-resident are taxed only on Indian-source income, income received in India or income received outside India arising from either a business controlled or a profession established in India.

Capital gains and losses

The sales proceeds of any depreciable asset must be applied to reduce the declining-balance value of the class of assets to which the asset belongs. If the sale proceeds exceed the declining-balance value of a relevant class of assets, including additions during the year, the excess is treated as a short-term capital gain and is taxed at 30%.

Capital gains on assets other than shares and securities listed on a stock exchange in India

Capital gains derived from the transfer of short-term assets (other than shares and securities) are taxed at normal rates.

Long-term capital gains are exempt from tax in certain cases if such gains are reinvested within six months in certain specified long-term assets. If, within three years of such reinvestment, the new assets are sold or, in certain cases, used as a security for a loan or an advance, the capital gains derived from the sale of the original asset are subject to tax in the year the new assets are sold or used as a 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 or specified bonds within the prescribed time.

Further, capital gains arising from the transfer of the land is exempt if such land has been used by 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 after the date of the transfer. If gains from the sale of agricultural land are not reinvested, they are taxed as short-term gains if the agricultural land is held for less than three years, and as long-term gains if the agricultural land is held for more than three years.

In calculating long-term capital gains, residents may adjust the cost of assets for inflation. For assets held on or before 1 April 1981, the market value on 1 April 1981 may be substituted for cost in calculating gains; for residents, the market value is also adjusted for inflation.

Capital gains on shares and securities listed on a stock exchange in India

Long-term capital gains derived from the transfer of equity shares or units of an equity-oriented fund on a recognized stock exchange in India on or after 1 October 2004 is exempt from tax if Securities Transaction Tax (STT) is payable on such transaction. The purchase or sale of such shares (or units of an equity-oriented fund) are subject to STT at prescribed rates, payable on the value of the transaction. The rates vary depending upon the nature of the transaction. STT is paid by the purchaser or seller of the shares or units or by both the purchaser and the seller, based upon the type of transaction. For example, in the case of delivery-based transactions in equity shares or units of equity oriented funds, STT is payable by both the purchaser and seller, while in the case of non-delivery based transactions, STT is payable only by the seller.

Short-term capital gains derived from the transfer of equity shares or units of equity-oriented funds on a recognized stock exchange in India is taxable at a reduced rate of 10% if the transaction is entered into on or after 1 October 2004 and if the STT is payable on such transactions.

Income from house property

Income from the letting 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, or self-occupied. The owner is entitled to a deduction on account of municipal taxes actually paid.

Further, he is entitled to a standard deduction towards repairs from such income at 30%

of the prescribed value. Interest on borrowed capital, up to specified limits and upon fulfilment of prescribed conditions, is also allowed as a deduction while computing the net income liable to tax.

Income from other sources

Income which does not specifically fall under any of the above types is liable to tax as 'income from other sources'. Examples include investment income and winnings from lotteries.

Investment income

Dividends are taxed in the following manner:

- Domestic companies are required to pay dividend distribution tax on profits distributed as dividends at a rate of 15% plus applicable surcharge (@10%) and education cess (@3%) with effect from 1 April 2007; and
- Amounts declared, distributed, or paid as dividends by Indian companies are not taxable in the hands of the shareholders

The dividends paid by foreign companies are subject to tax in the hands of shareholders.

Non-resident Indian nationals (including persons of Indian origin) may exercise an option to be taxed at a flat rate of 20% on gross investment income (without any deductions) arising from foreign-currency assets acquired in India through remittances in convertible foreign exchange. The tax must be withheld at source.

Interest payable on savings banks and fixed deposits in India is taxable, and taxes are withheld at source by the banks if the interest exceeds INR 10,000 in the tax year. Further, the interest payable by scheduled banks (on approved foreign-currency deposits) to non-residents and not ordinary residents is exempt from tax.

Sums received above INR 50,000

Any sum of money in excess of INR 50,000 received by an individual, on or after 1 April 2006, without consideration is taxable in the hands of the recipient. However, certain exclusions to the rule exist, such as the following amounts: amounts received by an individual from a relative (as defined in the Indian domestic tax rules); amounts received on the occasion of the marriage of the individual; or amounts received under a will, by way of an inheritance or in contemplation of death of the payer.

Deductions

For individuals, a deduction of up to INR 100,000 from gross total income may be claimed for prescribed contributions to savings instruments and pension funds. Also, deduction may be claimed from gross total income in case of payment of tuition fees for the education of specified family members. In addition, interest paid on loans obtained for pursuing higher education is fully deductible. However, no deduction is available for repayment of the principal amount.

Medical insurance premiums for recognized policies in India may be deducted, up to a maximum of INR 10,000 (INR 15,000 for taxpayers over 65 years of age) against aggregate income from all sources.

Business deductions

Taxpayers may generally deduct from gross income all business-related expenses. Personal expenses and capital expenditure other than expenditure for scientific research are not deductible. Allowable depreciation must be claimed up to the available limit.

Tax rates

The following tax rates are proposed to apply to resident and non-resident individual tax payers for the year ending 31 March 2008.

Income slabs (INR)	Income tax
0–110,000*	Nil
110,000–150,000	10% of income in excess of INR 110,000
150,001–250,000	INR 4,000 plus 20% of income in excess of INR 150,000
250,001–upwards	INR 24,000 plus 30% of income in excess of INR 250,000

* Resident individuals with income up to INR 110,000 do not pay the income tax and education cess. The exemption limit is increased to INR 145,000 for resident women younger than 65 years of age and to INR 195,000 for resident individuals who are 65 years of age or older.

** If the net taxable income exceeds INR 1,000,000, a surcharge is levied at a rate of 10%. The surcharge rate applies to total tax payable. In addition, an education cess of 3% is also levied on the tax and surcharge payable. The maximum marginal rate of tax on annual income in excess of INR 1,000,000 is effectively 33.99% (30% + 10% surcharge + 3% education cess).

For a sample tax calculation, see Appendix 6.3.

Relief for losses

Current year business losses can be set off against any other income under other heads except income under the head salaries. If the current year business losses cannot be set-off wholly, such business losses may be carried forward for eight years if the income tax return for the year of loss is filed on time. These carried forward losses, however, can be set off against only business income. Unabsorbed losses from speculative transactions may be carried forward for only four years and can be set off against profits only from speculative business. Unabsorbed depreciation may be carried forward indefinitely.

Tax filing and payment procedures

Income tax filing and payment

All income is taxed on the basis of the fiscal tax year from 1 April to 31 March. All taxpayers, including non-residents, must file returns if their income exceeds the maximum amount not chargeable to tax.

Income tax returns for salary income must be filed by 31 July, returns for self-employment or business income must also be filed by 31 July or, if accounts are subject to a tax audit, by 31 October. Wealth tax returns for individuals must be filed by the same deadline as applicable to them for income tax returns.

India does not have a concept of joint filing. As a result, married persons are taxed separately. If an individual directly or indirectly transfers an asset to his or her spouse for inadequate consideration, income derived from the asset is deemed to be the income of the transferor spouse. If an individual has a substantial interest in a business, remuneration paid by the business to the individual's spouse is taxed to the individual, unless the remuneration is attributable solely to the application of the spouse's technical or professional knowledge and experience. Passive income of minor children is aggregated with the income of the parent with the higher income.

Taxpayers with employment income pay tax through tax withheld by employer from monthly salaries each pay period. Taxpayers with tax liability exceeding INR 5,000 must make advance payments, after deducting credit for tax withheld, in three instalments on 15 September, 15 December, and 15 March.

Non-residents are subject to the same filing requirements as residents. However, non-resident citizens (including persons of Indian origin) who have only investment income or long-term capital gains (on foreign exchange assets) need not file returns if the required tax is withheld at source. Non-residents are subject to assessment procedures in the same manner as residents.

Before leaving the country, any individual not domiciled in India is required to furnish an undertaking to the prescribed authority and obtain a No Objection Certificate if he or she is in India for business, professional, or employment activities. Such undertakings must be obtained from the individual's employer or the payer of the income, and the undertaking must state that the employer or the payer of income will pay the tax payable by the individual. An exemption from obtaining the No Objection Certificate 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 India. At the time of departure of an individual domiciled in India, the individual must provide his or her permanent account number, the purpose of the visit outside India, and the estimated time period for the stay outside India to the prescribed authority. However, a person domiciled in India may also be required to obtain a No Objection Certificate in certain specified circumstances.

Quarterly Statement of Tax Withheld at Source: An entity withholding tax on or after 1 April 2005 is required to file quarterly statements of tax withheld in a prescribed format with the prescribed authority.

Annual information return

A new scheme of Income Tax returns notified with effect from the tax year 2006–07 prescribes that every taxpayer is required to disclose the amounts with respect to the following 'specified financial transactions':

1. Deposit of cash (excluding cheque or money transfer) aggregating to INR 1,000,000 or more in any savings bank account during the year
2. Total payments made against bills raised in respect of an India credit card aggregating to INR 200,000 or more during the year
3. Any payment of an amount of INR 200,000 or more for purchase of units of mutual funds in India during the year
4. Any payment of an amount of INR 500,000 or more for acquiring bonds or debentures issued by a company or institution in India during the year
5. Any payment of an amount of INR 100,000 or more for acquiring shares issued by a company in India during the year
6. Purchase of any immovable property valued at INR 3,000,000 or more in India during the year
7. Sale of any immovable property valued at INR 3,000,000 or more in India during the year
8. Payments aggregating to INR 500,000 or more for investment in bonds issued by the Reserve Bank of India, during the year

D.2 Other taxes

Wealth tax

Indian wealth tax is payable at a rate of 1% if the taxable value of net wealth exceeds INR 1.5 million. Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewelry, bullion, precious metals, cash in excess of INR 50,000, any amount not recorded in the books of account and commercial property not used as business, office or factory premises. However, a residential house and houses owned by an employer and provided to employees earning less than INR 500,000 a year are exempt from tax. The above assets, other than urban land, are exempt from tax if they are owned as stock-in-trade or are used for hire. Productive assets, including shares, debentures and bank deposits, are not subject to wealth tax. A deduction is allowed for debts owed that are incurred in relation to the taxable assets. The tax is levied on net wealth as of 31 March preceding the year of assessment.

Inheritance (or estate) and gift taxes

India does not impose tax on estates, inheritances, or gifts. However, any sum of money received by an individual in excess of INR 50,000 on or after 1 April 2006 without consideration is taxable in the hands of recipient, subject to certain exceptions.

Social security

No social security taxes are levied in India. However, certain statutory deductions, including Provident Fund and Employees State Insurance are withheld from the income earned by the tax payer in cases where the tax payer is employed in an establishment, which employs more than the specified number of people and/or in case the tax payer's income exceeds certain specified limits.

D.3 Double tax relief and tax treaties

Tax treaties provide varying relief for tax on income derived from personal services in specified circumstances. In certain circumstances, the treaties also provide tax relief for business income if no permanent establishment exists in India. India has entered into double tax treaties with the following countries:

Afghanistan	Finland
Armenia	France
Australia	Germany
Austria	Greece
Bangladesh	Hungary
Belarus	Indonesia
Belgium	Iran
Brazil	Ireland
Bulgaria	Israel
Canada	Italy
China	Japan
Cyprus	Jordan
Czechoslovakia	Kazakhstan
Czech Republic	Kenya
Denmark	Korea
Egypt	Kuwait
Ethiopia	Kyrgyz Republic

Lebanon
Libya
Malaysia
Malta
Mauritius
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Norway
Oman
Pakistan
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation*
Saudi Arabia
Singapore
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syria
Tanzania
Thailand
Trinidad and Tobago
Turkey
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States
Uzbekistan
Vietnam
Yemen
Zambia

* Cargo, merchant shipping, and other treaties.

If no applicable double tax treaty exists, resident taxpayers may claim a tax credit on foreign-source income equal to the lower of the tax imposed by the foreign country or the tax imposed by India on the foreign income.

D.4 Visa and registration requirements

Visa on arrival

There is no provision of 'Visa on Arrival' in India and no fee is charged for immigration facilities at the airports. Foreign passengers should ensure that they have a valid Indian Visa before they start their journey to India except nationals of Nepal and Bhutan who do not require visa to enter India and nationals of Maldives who do not require a visa for entry in India for a period up to 90 days (a separate Visa regime exists for diplomatic/official passport holders).

Temporary landing Facility/Permit (TLP/TLF)

There is a provision of granting TLF (Temporary Landing Facility)/TLP (Temporary Landing Permit) to allow the entry of foreigners arriving in emergent situations, for instance, death or serious illness in the family, without an Indian Visa on cash payment of USD 40. This facility can also be extended to transiting foreigners who manage to acquire 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 and with a pre-drawn itinerary can be granted a collective landing permit for a specified period of time on the written request of travel agencies to the Immigration Officer giving full personal and passport details of the group members and undertaking to conduct the group as per the itinerary and an assurance that no individual would be allowed to drop out from the group at any place. The above mentioned provisions of TLF/TLP, however, are not available to the nationals of Sri Lanka, Bangladesh, Pakistan, Iran, Afghanistan, Somalia, Nigeria, Ethiopia, and Algeria.

Tourist visas

Visitors to India need visas to enter the country unless they are Indian citizens. Ten (10) year visa is available only to US citizens under a bilateral arrangement. Non-resident Indians holding the citizenship of another country are also required to obtain visas before arriving in India unless they hold a Person of Indian Origin (PIO) card (see Section I) issued by the Indian Government. Visas should be obtained from the Indian embassy or consulate in the applicant's home country. Special permits are required for visiting 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 the visa 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.

Business and employment visas and self-employment

Business Visas: Multiple-entry business visas for short-term stays are issued to those visiting India on business for periods not exceeding six months. Multiple-entry business visas for long-term stays are issued to individuals visiting India on business for extended periods. This type of visa enables foreign nationals to travel in and out of the country without having to reapply for visas every six months. A letter from the sponsoring organization indicating the nature of the applicant's business, probable duration of stay, validity of visa, places, and organizations to be visited, and also a guarantee to meet maintenance expenses should accompany the application.

Employment Visas: Employment visas are issued to individuals entering India for the purpose of employment. These multiple-entry visas are valid from one to five years. An employment visa may be obtained in the home country or in the country where the foreigner is currently a resident. An appointment letter, contract letter, applicant's resume, and proof that the organization is registered in India are required. Duration of visa would depend on the period of the contract.

Self-Employment: Foreign nationals aspiring to practice their professions or carry out occupations, trades, or businesses in India must register with the Reserve Bank of India (RBI).

Journalist Visa: It is given to professional journalists and photographers. (If the concerned professional intends to make a documentary in India, they 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 a journal.

Other visa types issued in India include student visa, yoga visa, research visa, missionary visa, and conference visa, among others.

Foreign exchange regulations

Under the prevailing foreign-exchange rules, salaries earned locally may be repatriated only by individuals holding employment visas (see Section F). Foreign nationals who are not permanent residents of India, but who are regularly employed with Indian firms or companies on a monthly salary, are permitted to remit their salaries (net of retirement plan contributions and Indian taxes) to their home countries for maintenance of close relatives abroad. The definition of residential status of individuals under the exchange control law differs from the definition under the Income Tax Act, 1961.

An expatriate worker who is employed by a foreign company, but who is either resident (or resident but not permanently resident) in India or a citizen of

India employed by a foreign company outside India, may open and maintain a foreign-currency account with a foreign bank while assigned to a corporate entity of the foreign company in India. The salary received for services performed in India may be paid into that account by the foreign company if the following conditions are satisfied:

- The amount paid into the foreign bank account may not exceed 75% of the salary. This implies that 25% of the salary must be received in India. An employee who wishes to receive more than 75% outside India must file a request for approval to do so with the Reserve Bank of India (RBI)
- The remainder of the salary must be paid in rupees in India
- Indian income tax must be paid on the entire salary amount, regardless of the bank account into which the salary is paid

India regulates the 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 may 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 a person inherited the currency, security, or property from a person who was resident outside India.

Under a liberalized remittance scheme for resident individuals, which has been notified, total remittances of up to USD 200,000 per calendar year 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 fulfillment of specified conditions.

D.5 Residential permit

All foreign nationals are required to register with the police authorities at the local registration office within two weeks after their date of arrival if their visas are valid for longer than six months (or if the visa-stamp specifically requires this registration). A foreign national holding a visa valid for six months or less who wishes to stay in India beyond the period of validity must register within two weeks after 180 days from the time of arrival in India. A PIO card holder (see Section I) whose continuous stay in India exceeds 180 days is required to register within 30 days after 180 days from the time of arrival in India. To register with the local registration office, the following documents must be presented:

- Online application form to be filled in the person at the Foreigner's Regional Registration Office (FRRO);
- Photocopy of the passport and initial visa;
- Four photographs of the applicant;
- Details of residence in India;
- Notarized documents submitted to the President of India by a guarantor willing to reimburse the Government if the individual continues to reside in India, or if he or she is being supported by the Government;
- Copy of the marriage certificate in case of those seeking extension of stay on grounds of being married to an Indian national;
- Accreditation certificate from the Press Information Bureau in case of journalist visa;
- Approval of the Department of Company Affairs in the case of board level appointees in public limited companies;
- Two copies of the approval of the Government of India in case of a joint venture or collaboration
- Copy of permission from the RBI in case of business/joint venture;
- Terms and conditions of appointments and copy of contract or agreements, in case of employment visa
- Undertaking from the concerned Indian company (typically specifying the nature of work etc) in case of employment/business visa
- Copy of the passport of such individual signing the above mentioned undertaking. Please note only an Indian passport holder can provide such an undertaking
- Copy of the certificate of incorporation, Articles of

Association and the Memorandum of Association

The original passport and visa are also required at the time of filing for verification by authorities.

Registration is valid for the term of the visa and may be extended upon application. Failure to register may result in the immigration authority's refusal to allow the foreign national to leave the country.

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 made in the passport also regarding registration. The foreigner is required to intimate any permanent change in his address to the Registration Authorities. A foreigner is also required to inform the Registration Officer if he/she proposes to be absent from his/her registered address for a continuous period of 8 weeks or more. Similarly, a foreigner, who stays for a period of more than eight weeks at any place other than the district of his registered address, shall inform the Registration Officer of that district of his presence.

D.6 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. Family members intending to reside with a working expatriate must register separately at the local registration office (see Section G). Children of working expatriates must obtain student visas to attend Indian schools.

Restricted areas

Advance permission is required from the Indian Government (from Indian diplomatic missions abroad) or for US citizens currently in India, from the Ministry of Home Affairs (MHA) in New Delhi, to visit certain states. These include Mizoram, Manipur, Nagaland, Arunachal Pradesh, Sikkim, parts of Kulu district and Spiti district of Himachal Pradesh, border areas of Jammu and Kashmir, some areas of Uttaranchal, the area west of National Highway No. 15

running from Ganganagar to Sanchor in Rajasthan, the Andaman and Nicobar Islands, and the Union Territory of the Laccadives Islands (Lakshadweep). US citizens who visit the Tibetan Colony in Mundgod, Karnataka, must obtain a permit from MHA before visiting. US citizens may contact the MHA at: (91)(11) 2469-3334 or 2301-3054. Tourists should exercise caution while visiting Mahabalipuram. The Indira Gandhi Atomic Research Center, Kalpakkam, is located directly adjacent to the site, and is not clearly marked as a restricted and dangerous area.

Drivers permit

Foreign nationals are not permitted to drive in India using their home country drivers' licenses. Foreign nationals should obtain international drivers' licenses in their home countries. International drivers' 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 enables 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 verbal examination of the local driving laws must be taken. On successful completion of the examinations, the Regional Transport Authority issues a driver's license.

D.7 Other matters

Exchange controls

Under the prevailing foreign-exchange rules, salaries earned locally may be repatriated only by individuals holding employment visas (see Section F). Foreign nationals who are not permanent residents of India, but who are regularly employed with Indian firms or companies on a monthly salary, are permitted to remit their salaries (net of retirement plan contributions and Indian taxes) to their home countries for maintenance of close relatives abroad. The definition of residential status of individuals under the exchange control law differs from the definition under the Income Tax Act, 1961.

An expatriate worker who is employed by a foreign company, but who is either resident (or resident but not permanently resident) in India or a citizen of India employed by a foreign company outside India, may open and maintain a foreign-currency account with a foreign bank while assigned to a corporate entity of the foreign company in India. The salary received for services performed in India may be paid into that account by the foreign company if the following conditions are satisfied:

- The amount paid into the foreign bank account may not exceed 75% of the salary. This implies that 25% of the salary must be received in India. An employee who wishes to receive more than 75% outside India must file a request for approval to do so with the Reserve Bank of India (RBI)
- The remainder of the salary must be paid in rupees in India
- Indian income tax must be paid on the entire salary amount, regardless of the bank account into which the salary is paid

India regulates the 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 may 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.

Under a liberalized remittance scheme for resident individuals, which has been notified, total remittances of up to USD 100,000 per calendar year 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 fulfillment of specified conditions

Person of Indian origin card

A Person of Indian Origin (PIO) card can be obtained by any individual who satisfies any of the following conditions:

- The individual has held at any time an Indian passport
- The individual or any of his or her parents, grandparents, or

great-grandparents were born in and permanently resident in India

- The individual's spouse is a citizen of India or a person of Indian origin. This implies that even a foreign spouse of a citizen of India or of a person of Indian origin may apply for a PIO card

PIO card holders are granted certain benefits, which include:

- The waiver of the requirement for obtaining a visa for visiting India;
- Exemption from the requirement of registration if the individual's stay in India does not exceed 180 days;
- The acquisition, holding, transfer, and disposal of immovable properties in India; and
- Facilities for obtaining admission to educational institutions in India

Dual citizenship

In December 2003, the Indian parliament passed a bill to allow persons of Indian origin who are also citizens of one of the listed countries (16 countries have been listed) to acquire 'Overseas Citizenship' of India without surrendering the citizenship of the other country. The benefit of dual citizenship was recently extended to all persons of Indian origin who migrated from India after 26 January 1950. Overseas citizens of India will be entitled to certain rights and benefits, which will be prescribed by the Central Government.

Appendices

Appendices

Appendix 1: Useful addresses and telephone numbers

When calling from an international location, the caller must dial the international country code for India (0091) followed by the city code (mentioned within brackets) and the local telephone number. When calling from within India, the caller must dial 0 followed by the city code and the local telephone number.

Business facilitators	
Confederation of Indian Industry	CII Mantosh Sondhi Centre 23, Institutional Area, Lodhi Road New Delhi 110 003 Telephone: (11) 2462 9994 Facsimile: (11) 2462 1649 / 2463 3168 Website: www.ciionline.org
Federation of Indian Chambers of Commerce and Industry	Federation House Tansen Marg New Delhi 110 001 Telephone: (11) 2373 8760 – 70 Facsimile: (11) 2372 1504 / 2332 0714 Website: www.ficci.com
The Associated Chambers of Commerce and Industry in India	ASSOCHAM Corporate Office, 1, Community Centre Zamrudpur Kailash Colony, New Delhi – 110 048 Telephone: 46550555 Facsimile: 46536481/46536482 46536497/46536498 Website: www.assocham.org
Indian Investment Centre	Department of Economic Affairs Jeevan Vihar, 4th Floor Sansad Marg New Delhi 110 001 Telephone: (11) 2373 3673 / 79 Facsimile: (11) 2373 2245 Website: www.iic.nic.in

Business facilitators	
Department of Industrial Policy & Promotion	Ministry of Commerce & Industry Udyog Bhawan New Delhi 110 011 Telephone: (11) 2306 1222 Facsimile: (11) 2306 2626 Website: www.dipp.gov.in
Foreign Investment Promotion Board	Department of Economic Affairs Ministry of Finance North Block New Delhi 110 001 Telephone: (11) 2309 4905 Facsimile: (11) 2309 3422 Website: www.finmin.nic.in
Software Technology Parks of India	Electronics Niketan 6, CGO Complex, Lodhi Road, New Delhi 110 035 Telephone: (11) 2436 2811 /3187 24364034/3484 Facsimile: (11) 24363436/24634336 Website: www.stpi.soft.net

Regulatory bodies	
Reserve Bank of India	Central Office Shahid Bhagat Singh Marg Mumbai 400 001 Telephone: (22) 2266 1602 Facsimile: (22) 2266 2105 Website: www.rbi.org.in
Insurance Regulatory and Development Authority	3rd Floor, Parisrama Bhavanam Basheerbagh Hyderabad 500 004 Telephone: (40) 23381100 Facsimile: (40) 6682 3334 Website: www.irdaindia.org
Securities and Exchange Board of India	Mittal Court B Wing 224, Nariman Point Mumbai 400 021 Telephone: (22) 2285 0451 Facsimile: (22) 2285 5585 Website: www.sebi.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) 2321 1934/ 3223 Facsimile: (11) 2321 3294 Website: www.trai.gov.in
Directorate General of Hydrocarbons	C-139, Sector 63 Noida 201 301 Telephone: (120) 4029400 Facsimile: (120) 4029410 Website: www.dghindia.org
Directorate General of Civil Aviation	Aurobindo Marg, Opposite Safdarjung Airport New Delhi 110 003 Telephone: (11) 2462 2495 Facsimile: (11) 2462 9221 Website: www.dgca.nic.in

Regulatory bodies	
Directorate General of Shipping	Jahaz Bhavan Walchand Hirachand Marg Mumbai 400 001 Telephone: (22) 2261 3651 – 54 Facsimile: (22) 2261 3655 Website: www.dgshipping.nic.in
Central Drugs Standard Control Organization	Nirman Bhawan New Delhi 110 011 Telephone: (11) 2301 8806 Facsimile: (11) 2301 2648 Website: www.cdso.nic.in
Central Board of Excise & Customs	North Block New Delhi 110 001 Telephone: (11) 2301 3908 Facsimile: (11) 2301 6475 Website: www.cbec.gov.in
National Highways Authority of India	G 5&6, Sector-10, Dwarka New Delhi 110 045 Telephone: (11) 2507 4100 Facsimile: (11) 2508 0360 Website: www.nhai.org

Key ministries in the Government of India	
Ministry of Civil Aviation	Rajiv Gandhi Bhawan, B Block Safdarjung Airport Complex New Delhi 110 003 Telephone: (11) 2461 0358 Facsimile: (11) 2461 0378 Website: www.civilaviation.nic.in
Department of Chemicals & Petrochemicals	Shastri Bhawan, A Wing Dr Rajendra Prasad Marg New Delhi 110 001 Telephone: (11) 2338 4196 / 2338 2467 Facsimile: (11) 2338 7892 Website: www.chemicals.nic.in
Department of Commerce	Udyog Bhawan New Delhi 110 011 Telephone: (11) 2306 3664 Facsimile: (11) 2306 1796 Website: www.commerce.gov.in
Department of Information Technology	Electronics Niketan CGO Complex, Lodhi Road, New Delhi 110 003 Telephone: (11) 2436 4041 Facsimile: (11) 2436 3134 Website: www.mit.gov.in
Department of Telecommunications	Sanchar Bhawan 20, Ashoka Road New Delhi 110 001 Telephone: (11) 2371 9898 Facsimile: (11) 2371 1514 Website: www.dot.gov.in
Ministry of Environment & Forests	Paryavaran Bhawan CGO Complex, Lodhi Road New Delhi 110 003 Telephone: (11) 2436 1896 / 2436 0721 Website: www.envfor.nic.in

Key ministries in the Government of India	
Ministry of Finance	North Block New Delhi 110 001 Telephone: (11) 2309 2947 Facsimile: (11) 2309 2145 Website: www.finmin.nic.in
Ministry of Food Processing Industries	Panchsheel Bhavan August Kranti Marg New Delhi 110 049 Telephone: (11) 2649 2475 Facsimile: (11) 2649 3228 Website: www.mofpi.nic.in
Ministry of Information & Broadcasting	Shastri Bhawan, A Wing Dr Rajendra Prasad Marg New Delhi 110 001 Telephone: (11) 2338 2639 Facsimile: (11) 2338 3513 Website: www.mib.nic.in
Ministry of Mines	3rd Floor, A Wing Shastri Bhawan Dr Rajendra Prasad Marg New Delhi 110 001 Telephone: (11) 2338 3082 Facsimile: (11) 2338 6402 Website: www.mines.nic.in
Ministry of Petroleum and Natural Gas	Shastri Bhawan Dr Rajendra Prasad Road New Delhi 110 001 Telephone: (11) 2338 3562 Facsimile: (11) 2307 0723 Website: www.petroleum.nic.in
Ministry of Power	Shram Shakti Bhavan New Delhi 110 001 Telephone: (11) 2371 1316 / 0271 Facsimile: (11) 2372 1487 Website: www.powermin.nic.in

Key ministries in the Government of India	
Department of Shipping	Transport Bhavan 1, Parliament Street New Delhi 110 001 Telephone: (11) 2371 4938 Facsimile: (11) 2371 6656 Website: www.shipping.nic.in
Department of Road Transport & Highways	Transport Bhavan 1, Parliament Street New Delhi 110 001 Telephone: (11) 2371 4104 Facsimile: (11) 2335 6669 Website: www.morth.nic.in
Ministry of Steel	Udyog Bhawan New Delhi 110 011 Telephone: (11) 2379 3432 Facsimile: (11) 2301 3236 Website: www.steel.nic.in
Ministry of Textiles	Udyog Bhawan New Delhi 110 011 Telephone: (11) 2306 1330 / 10 / 14 Facsimile: (11) 2306 3711 / 3681 Website: www.texmin.nic.in
Ministry of Tourism	Transport Bhavan 1, Parliament Street New Delhi 110 001 Telephone: (11) 2371 1792 / 2332 1395 Facsimile: (11) 2371 7890 Website: www.tourism.nic.in

Industry associations	
Indian Banks Association	6th Floor, Centre 1 World Trade Centre Complex Cuffe Parade Mumbai 400 005 Telephone: (22) 2217 4040 Facsimile: (22) 2218 4222 Website: www.indianbanksassociation.org
Association of Mutual Funds in India	709, Raheja Centre, Free Press Journal Marg Nariman Point, Mumbai 400 021 Telephone: (22) 66101886/7, 22876338/9 Facsimile: (22) 66101889/66101916 Website: www.amfiindia.com
Chemicals and Petrochemicals Manufacturers Association	10th Floor, Vijaya Building, 17, Barakhamba Road New Delhi 110 001 Telephone: (11) 2332 6377 / 2332 2068 Facsimile: (11) 2331 0282 Website: www.cpmai.net
Indian Chemicals Manufacturers Association	Sir Vithaldas Chambers 16, Mumbai Samachar Marg Mumbai 400 023 Telephone: (22) 2204 7649 / 8043 2284 6852 Facsimile: (22) 2204 8057 Website: www.icmaindia.com
All India Plastics Manufacturers' Association	AIPMA House, A-52, Street No. 1 MIDC, Marol, Andheri East Mumbai 400 093 Telephone: (22) 2821 7324 / 7325 Facsimile: (22) 2835 2511 / 2512 Website: www.aipma.net

Industry associations	
Bulk Drug Manufacturers Association	C-25, Industrial Estate Near SBH, Sanath Nagar Hyderabad 500 038 Telephone: (40) 2370 3910 / 6718 Facsimile: (40) 2370 4804 Website: www.bdm-assn.org
Indian Drug Manufacturers Association	102-B, Poonam Chambers Dr Annie Besant Road, Worli Mumbai 400 018 Telephone: (22) 2497 4308 / 2494 4624 Facsimile: (22) 2495 0723 Website: www.idma-assn.org
Organization of Pharmaceutical Producers of India	Ground Floor, Peninsula Chambers Ganpatrao Kadam Marg, Lower Parel Mumbai 400 013 Telephone: (22) 2491 8123 / 2486 / 5662 7007 Facsimile: (22) 2491 5168 Website: www.indiaoppi.com
Association of Biotechnology Led Enterprises	No 13, Second Floor, 4th C Block 10th Main Road, Koramangala Bangalore 560 034 Telephone: (80) 2553 3938 Facsimile: (80) 2553 3938 Website: www.ableindia.org
National Association of Software and Service Companies	International Youth Centre Teen Murti Marg, Chanakyapuri New Delhi 110 021 Telephone: (11) 2301 0199 Facsimile: (11) 2301 5452 Website: www.nasscom.org
Manufacturers' Association for Information Technology	4th Floor, PHD House Opposite Asian Games Village New Delhi 110 016 Telephone: (11) 2685 5487 / 2686 6976 Facsimile: (11) 2685 1321 Website: www.mait.com

Industry associations	
India Semiconductor Association	3rd Floor, Divyasree Chambers Langford Town Bangalore 560 025 Telephone: (80) 2212 0009 Facsimile: (80) 2207 2186 Website: www.isaonline.org
Cellular Operators Association of India	14, Bhai Veer Singh Marg New Delhi 110 001 Telephone: (11) 2334 9275 Facsimile: (11) 2334 9276 9277 Website: www.coai.in
Association of Unified Telecom Service Providers of India	B-601, Gauri Sadan 5, Hailey Road New Delhi 110 001 Telephone: (11) 2335 8585 / 8989 Facsimile: (11) 2332 7397 Website: www.auspi.org
The Indian Broadcasting Foundation	B-304, Third Floor, Ansal Plaza, Hudco Place, Khelgaon Marg, Andrewsganj, New Delhi 110 049 Telephone: (11) 2625 5238 / 5239 / 1618 Facsimile: (11) 2625 5240 Website: www.ibf-india.com
Electronic Component Industries Association	ELCINA House 422, Okhla Industrial Estate New Delhi 110 020 Telephone: (11) 2692 4597 / 8053 Facsimile: (11) 2692 3440 Website: www.elcina.com
Indian Electrical & Electronics Manufacturers Association	501, Kakad Chambers 132, Dr Annie Besant Road, Worli Mumbai 400 018 Telephone: (22) 2493 0532 / 6528 / 6529 Facsimile: (22) 2493 2705 Website: www.ieema.org

Industry associations	
Consumer Electronics & TV Manufacturers Association	J-13, Jangpura Extension New Delhi 110 014 Telephone: (11) 2432 1616 / 3090 8288 Facsimile: (11) 2432 1616 Website: www.cetmaindia.org
Society of Indian Automobile Manufacturers	Core 4-B, 5th Floor, India Habitat Centre Lodhi Road New Delhi 110 003 Telephone: (11) 2464 7810-12 Facsimile: (11) 2464 8222 Website: www.siamindia.com
Automotive Component Manufacturers Association of India	6th Floor, The Capital Court Olof Palme Marg, Munirka New Delhi 110 067 Telephone: (11) 2616 0315 / 2617 5873 Facsimile: (11) 2616 0317 Website: www.acmainfo.com
Federation of Indian Export Organisations	Niryat Bhawan", Rao Tula Ram Marg, Opp. Army Hospital Research & Referral, New Delhi -110057 Telephone: (11) 26150101-04 Facsimile: (11) 26150066/26150077 Website: www.fieo.org

Appendix 2: Exchange rates

The table below provides the RBI reference exchange rates of the Indian Rupee against the four major currencies as on 10 January 2008.

Currency	Exchange rate
US Dollar	39.29
Euro	57.85
UK Pound	77.52
Japanese Yen (per 100 JPY)	35.84
Source: Reserve Bank of India	

Appendix 3 : FDI policy

Appendix 3.1: Illustrative list of sectors in which FDI up to 100% is allowed under the automatic route

- Most manufacturing activities
- Non-banking financial services
- Drugs and pharmaceuticals
- Food processing
- Electronic hardware
- Software development
- Film industry
- Advertising
- Hospitals
- Hotels
- Private oil refineries
- Pollution control and management
- Mining covering exploration and mining of diamonds and precious stones; gold, silver and minerals
- Management consultancy
- Venture capital funds/companies
- Special Economic Zone ('SEZ') and Free Trade Warehousing Zone ('FTWZ') covering setting up of these Zones and setting up unit in these Zones
- Petroleum products pipeline
- Wholesale cash and carry trading
- Power
- Alcohol distillation and brewing

Appendix 3.2: Illustrative list of infrastructure sectors in which FDI upto 100% is allowed under the automatic route

- Electricity generation (except atomic energy)
- Electricity transmission
- Electricity distribution
- Mass rapid transport system
- Roads and highways
- Toll roads
- Vehicular bridges
- Ports and harbours
- Hotel and tourism
- Townships, housing, built-up infrastructure, and construction development projects

Appendix 3.3: Illustrative list of services sectors in which FDI up to 100% is allowed under the automatic route

- Computer-related services
- Research and development services
- Construction and related engineering services
- Pollution control and management services
- Urban planning and landscape services
- Architectural services
- Health-related and social services
- Travel-related services
- Road transport services
- Maritime transport services
- Internal waterways transport services

Appendix 4: Corporate tax calculation

The following example illustrates the computation of taxable income and tax liability of a domestic company for the income year 1 April 2007 to 31 March 2008.

Net profit as per financial statement		14,500,000
Less:		
Net dividends received from domestic company (exempt from tax)	(2,000,000)	
Income from sub-leased property (considered separately)	(200,000)	(2,200,000)
		12,300,000
Add:		
Provision for tax	9,000,000	
Depreciation as per financial statements	3,000,000	
Disallowed expenses	200,000	12,200,000
(such expenses are not related to the business)		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 10%		574,200
Education cess at 3%		189,486
Tax payable		6,505,686
Less:		
Advance tax paid during the income year		(5,700,000)
Balance tax payable / (refundable) with return of income (1)		805,686

The liability for tax excludes the interest chargeable on account of underpayment of advance tax

Appendix 5 : Treaty tax rates

The following table presents the lower of 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.

	Interest per cent	Royalties (f) per cent
Armenia	10 (b)	10 (d)
Australia	15	10 (c)
Austria	10 (b)	10 (d)
Bangladesh	10 (b)	10 (d)
Belarus	10 (b)	10 (c)
Belgium	15 (b)	10 (e)
Brazil	15 (b)	10 (c)
Bulgaria	15 (b)	10 (c)
Canada	15 (b)	10 (c)
China	10 (b)	10 (d)
Cyprus	10 (b)	10 (c)
Czech Republic	10 (b)	10 (d)
Denmark	15 (b)	10 (c)
Finland	10 (b)	10 (c)
France	10 (b) (e)	10 (d) (e)
Germany	10 (b)	10 (d)
Greece	20 (a)	10 (c)
Hungary	10 (b) (e)	10 (c) (e)

	Interest per cent	Royalties (f) per cent
Iceland (h)	10 (b)	10 (d)
Indonesia	10 (b)	10 (c)
Ireland	10 (b)	10 (d)
Israel	10 (b) (e)	10 (d) (e)
Italy	15 (b)	10 (c)
Japan	15 (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 (i)	10 (b)	10 (d)
Kyrgyzstan	10 (b)	10 (c)
Libya	20 (a)	10 (c)
Malaysia	10 (b)	10 (d)
Malta	10 (b)	10 (c)
Mauritius	20 (a) (b)	10 (c)
Mexico (j)	10 (b)	10 (d)
Mongolia	15 (b)	10 (c)
Morocco	10 (b)	10 (d)
Namibia	10 (b)	10 (d)
Nepal	15 (b)	10 (c)
Netherlands	10 (b) (e)	10 (d) (e)

	Interest per cent	Royalties (f) per cent
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 (g)	10 (b)	10 (d)
Singapore	15 (b)	10 (d)
Slovenia	10 (b)	10 (d)
South Africa	10 (b)	10 (d)
Spain	15 (b)	10 (c) (e)
Sri Lanka	10 (b)	10 (d)
Sudan	10 (b)	10 (d)
Sweden	10 (b) (e)	10 (d) (e)
Switzerland	10 (b) (e)	10 (d) (e)
Syria	7.5 (b)	10 (d)
Tanzania	12.5 (b)	10 (c)
Thailand	20 (a) (b)	10 (c)
Trinidad and Tobago	10 (b)	10 (d)
Turkey	15 (b)	10 (c)
Turkmenistan	10 (b)	10 (d)

	Interest per cent	Royalties (f) per cent
Uganda	10 (b)	10 (d)
Ukraine	10 (b)	10 (d)
United Arab Emirates	12.5 (b)	10 (d)
United Arab Republic	20 (a)	10 (c)
United Kingdom	15 (b)	10 (c)
United States	15 (b)	10 (c)
Uzbekistan	15 (b)	10 (c)
Vietnam	10 (b)	10 (d)
Zambia	10 (b)	10 (d)
Non-treaty countries	20 (a)	10 (c)

(a) This rate applies to the interest on monies borrowed, or debts incurred, in foreign currency. Other interest is taxed at a rate of 40% plus a surcharge of 2.5% (only where the aggregate income exceeds INR 10 million) 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 Government

© This rate is provided under the Indian income tax law, being the rate lower than that prescribed under the relevant treaty. This rate is increased by a surcharge of 2.5% (only where the aggregate income exceeds Rs 10 million) and further enhanced by an education cess of 3% (on income-tax and surcharge) for the year ending 31 March 2008. It applies to royalties (not effectively connected to permanent establishment or fixed base in India) paid to foreign corporations under agreements that are approved by the Government of India or are in accordance with the industrial policy, and that are 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 2.5% (only where the aggregate income exceeds INR 10 million) and an education cess of 3% (on income-tax and surcharge)

(d) This rate is provided under the relevant treaty. It applies to royalty not effectively connected with permanent establishment in India

(e) A more restrictive scope of the definition of royalty may be available under the most favored nation clause in the relevant 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) The tax treaty is effective from 1 April 2007

(h) The tax treaty is effective from 1 April 2008

(i) The tax treaty is not effective as on date

(j) Dividends: Under the Indian income tax law, Indian companies must pay DDT at a rate of 15% plus a surcharge of 10% 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

Appendix 6.1: Individual income tax calculation

The following example illustrates the method of calculating taxable income and income tax liability for an individual for the income year 1 April 2007 to 31 March 2008.

	INR	INR
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 (long-term)		30,000
Interest income		20,000
Gross total income		**330,000**
Less allowable deductions:		
Medical insurance,	(10,000)	
Investments in: **(a)**		
▸ Provident fund	(20,000)	
▸ Life insurance	(10,000)	
▸ Other tax saving investments	(20,000)	60,000
Taxable income (b)		270,000*
Calculation of Tax Liability		
Ordinary taxable income at rates from the personal income tax rate table [(240,000-150,000) x 20% + 4,000] (c)		22,000
Capital gains (long-term of 30,000 x 20%)		6,000
Total tax liability		28,000
Surcharge		
Education cess @ 3%		840
Less:		
Taxes withheld on salary	18,540	
Advance tax payment	10,300	(28,840)
Balance due with filing of return		0

(a) Contributions/investments in the tax savings plan will be allowed as deduction from gross total income up to INR 100,000.

(b) Taxable income consists of long-term capital gains (INR 30,000) other than listed securities.

(c) In case of a resident woman and resident senior citizen*, the minimum taxable income threshold is INR 145,000 and INR 195,000, respectively, as against INR 110,000 for any other individual.

Appendix 6.2: Taxability of income items

	Taxable	Not Taxable	Comments
Compensation			
Base salary	X	–	(a)
Bonus	X	–	(a)
Cost-of-living allowance	X	–	(a)
Tax perquisite (that is, tax paid by employer)	X	–	(b)
Rent-free housing	X	–	(c)
Utilities	X	–	(a)
Education reimbursement	X	–	(a)
Hardship allowance	X	–	(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	–
Other Items			
Foreign-source personal ordinary income (interest and dividends)	–	X	(f)
Capital gain from sale of personal residence in home country	–	X	(f)
Capital gains from sale of other assets in home country (stocks and shares)	–	X	(f)

(a) Compensation 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 a taxable perquisite in the hands of the employee. However, tax paid on non monetary benefits provided to an employee is not treated as income in the hands of the employee, subject to the satisfaction of certain conditions.

(c) The taxable value of a perquisite with respect to rent-free housing is calculated using a formula (see Appendix 2).

(d) Relocation expenses incurred at the time of transfer are not taxable to the employee, subject to the satisfaction of certain conditions. These may be subject to FBT.

(e) Medical expenditures or reimbursements are exempt, subject to certain conditions and limits.

(f) This item is 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 6.3: Sample tax calculation

The following is a tax calculation for an expatriate who was sent to India on 1 April 2007 for a period of two years.

	US$		US$
Calculation of Taxable Income			
Basic salary	120,000		
Bonus	12,000		
Employer pension contribution to home-country plan	8,400	(a)	
Children education allowance (after exemption)	12,000	(b)	
Cost-of-living allowance	24,000		
Foreign-service premium	30,000		
Housing utilities	1,200		
Total of salary, bonus and taxable allowances			207,600
Perquisite (c):			
Rent paid by employer for unfurnished housing (lower of amount paid of US$36,000 or 20% of salary, bonus and taxable allowances, which equals US$39,600 [20% of US$198,000])			
Taxable perquisite			36,000
Taxable income			243,600
Taxable income in Indian currency (Rs. 243,600 X 41) (d)			**9,987,600**
Calculation of Tax Payable			Rs.
Income tax			2,945,280
Surcharge at 10%			294,528
Education cess at 3%			97,194
Total tax payable			3,337,002

(a) Employer contributions to a home-country plan may be claimed as non taxable based on judicial pronouncements.

(b) Car hire and maintenance charges are not taxable in the hands of the employee because these charges are now subject to FBT payable by the employer.

(c) For purposes of the example, the conversion rate is USD 1 = INR 41.

(d) It is assumed that the city in which the accommodation is provided had population exceeding 2.5 million as per 2001 census.

Our Offices

Ahmedabad
Shivalik Ishan Building
2nd Floor Beside Reliance Petrol Pump
Ambavadi
Ahmedabad - 380015
Tel: +91 079 6608 3800
Fax: +91 079 6608 3900

Bangalore
"UB City", Canberra Block
12th & 13th floor
No.24, Vittal Mallya Road
Bangalore - 560 001
Tel: +91 80 4027 5000
Fax: +91 80 2210 6000

Chennai
TPL House, 2nd floor
No 3, Cenotaph Road
Teynampet
Chennai - 600 018
Tel: +91 44 2431 1440
Fax: +91 44 2431 1450

Gurgaon
Golf View Corporate Tower - B
Near DLF Golf Course
Sector 42
Gurgaon - 122002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

Hyderabad
205, 2nd floor
Ashoka Bhoopal Chambers
Sardar Patel Road
Secunderabad - 500 003
Tel: +91 40 6627 4000
Fax: +91 40 2789 8851

Kolkata
22, Camac Street
Block 'C', 3rd floor
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 2281 7750

Mumbai
6th floor & 18th floor Express Towers
Nariman Point
Mumbai - 400 021
Tel: +91 22 6657 9200 (6th floor)
+91 22 6665 5000 (18th floor)
Fax: +91 22 6630 1222

Jolly Makers Chambers II
15th floor, Nariman Point
Mumbai - 400 021
Tel : +91 22 6749 8000
Fax : +91 22 6749 8200

Jalan Mill Compound
95, Ganpatrao Kadam Marg
Lower Parel, Mumbai - 400 013
Tel: +91 22 4035 6300
Fax: +91 22 4035 6400

New Delhi
6th floor, HT House
18-20 Kasturba Gandhi Marg
New Delhi - 110 001
Tel: +91 11 4363 3000
Fax: +91 11 4363 3200

Pune
C-401, 4th floor
Panchshil Tech Park
Yerwada (Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6601 6000
Fax: +91 20 6601 5900

Ernst & Young Pvt Ltd.

Assurance | Tax | Transactions | Advisory

About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 130,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve potential.

For more information, please visit www.ey.com/india

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Ernst & Young Private Limited is one of the Indian client serving member firm of Ernst & Young Global Limited.

Ernst & Young Pvt Ltd is a company registered under the Companies Act, 1956 having its registered office at Block C, 3rd Floor, 22 Camac Street, Kolkata- 700016

0008.indd (India) 07/05. Artwork by Sanjeev Gupta.