



Doing Business in India

2013

ABOUT THE BOOK

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This book is a valuable guide to potential investors especially from abroad and gives a bird's eye view of prevailing economic scenarios, taxation, legal compliances, FDI policies and various other resources required to start up a business in India. It's a compilation of all information which is relevant for planning to invest in India.



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The Indian Economy

India is the largest democracy in the world, with a population of around 1.2 billion, out of which 85% are under 35 years of age. A cultural juggernaut, India's diversity in language, religion and customs are impressive. It is expected that in the 2010 – 2015 period, the population of India will grow by 1.3% every year.



The economy of India is the tenth-largest in the world by nominal GDP and the third-largest by purchasing power parity (PPP). The country is one of the G-20 major economies and a member of BRICS. India is the 19th-largest exporter and the 10th-largest importer in the world. The economy slowed to around 5.0% for the 2012–13 fiscal year compared with 6.2% in the previous fiscal.

The independence-era Indian economy (from 1947 to 1991) was based on a mixed economy combining features of capitalism and socialism, resulting in an inward-looking, interventionist policies and import-substituting economy that failed to take advantage of the post-war expansion of trade.

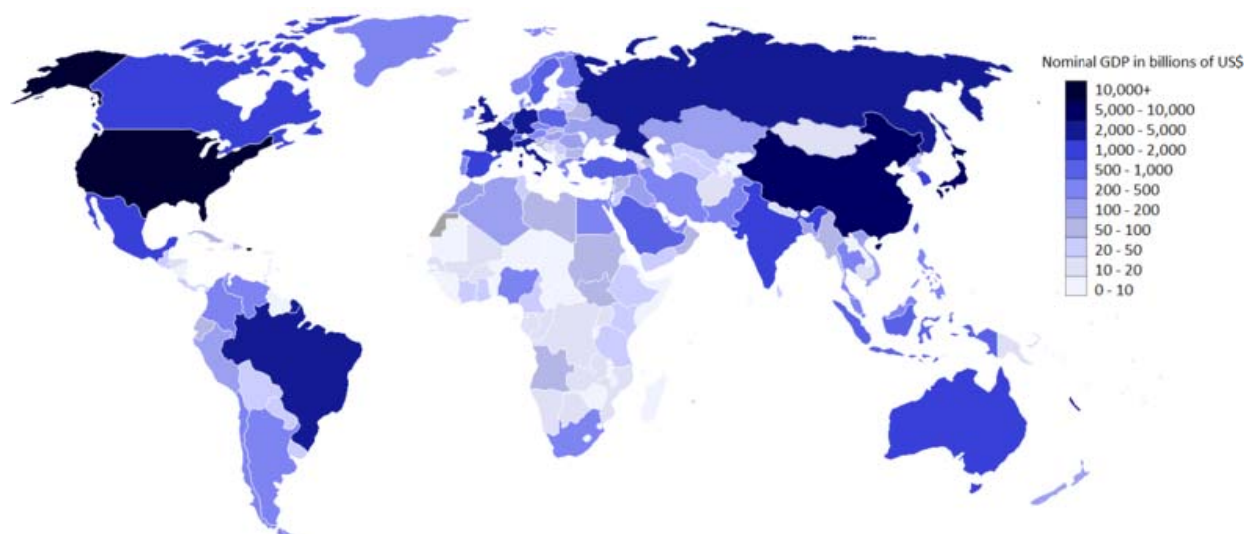
This model contributed to widespread inefficiencies and corruption, and the failings of this system were due largely to its poor implementation.

In 1991, India adopted liberal and free-market principles and liberalised its economy to international trade under the guidance of Former Finance minister Manmohan Singh. Following these major economic reforms, and a strong focus on developing national infrastructure such as the Golden Quadrilateral project, the country's economic growth progressed at a rapid pace, with relatively large increases in per-capita incomes.

English is the language used in commercial relations and cities such as Mumbai, Delhi, and Bangalore are best when it comes to international operations, but important opportunities can also be found in other cities. Although it has a highly bureaucratic government, the immensity of the market and diversity that is to be found in India, make it almost irresistible to investors.

GDP

India's GDP growth rate would pick up this financial year (2013-14) and be in the range of 5-5.5 per cent as against 5 per cent in the previous fiscal and 4.4 per cent recorded in the first quarter of the current fiscal, Prime Minister's Economic Advisory Council (PMEAC) Chairman C Rangarajan said.

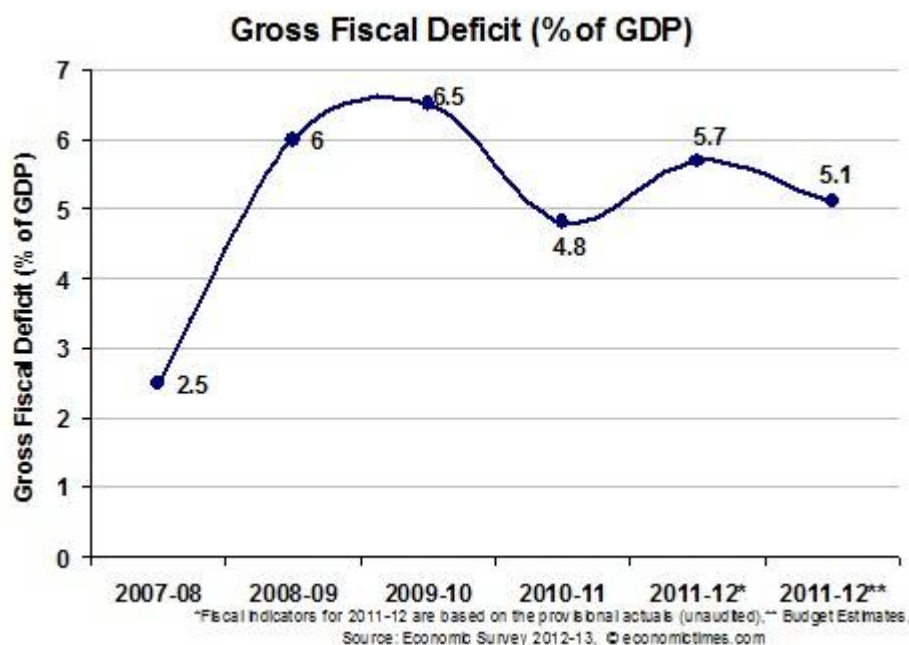


Several growth-friendly measures taken in the last six months by the government and the RBI will help increase the growth rate. Steps to clear projects faster like setting up of the Cabinet Committee on Investment (CCI) will also help the country. The finance Minister had also exuded confidence that the revenue target for 2013-14 financial year would be achieved as the GDP growth is likely to be over 6 per cent. The government estimates GDP growth in the current fiscal to improve to 6.1-6.7 per cent.

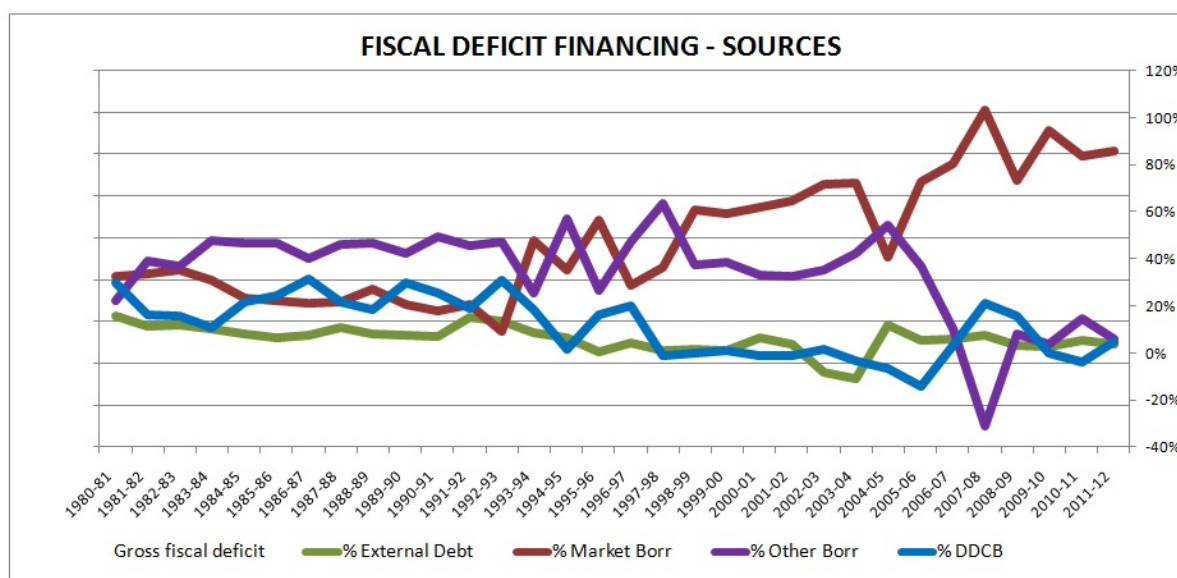
Sr. No	Particulars	World Rank
1	GDP (Purchasing Power Parity)	3
2	GDP (in USD)	4
3	GDP (as per United Nations)	9
4	GDP (as per IMF)	10

Fiscal Deficit

Helped by higher revenue mop up, fiscal deficit for 2012-13 worked out to be at 4.89 per cent of GDP, down from revised estimate of 5.2 per cent, sources said. "Due to good revenue receipt and higher non tax revenue collection, fiscal deficit has come to 4.89 per cent against revised estimate of 5.2 per cent," finance ministry sources said. The government had budgeted revenue realisation for 2012-13 fiscal at Rs 10.38 lakh crore



Committed to fiscal prudence, the government in the Budget had proposed to lower fiscal deficit to 4.8 per cent of GDP in 2013-14 and reduce it gradually to 3 per cent by 2016-17.



Currently Market Borrowing contributes to around 80% of the total Fiscal Deficit Financing.

US investment bank Morgan Stanley expects the government to meet its fiscal deficit target of 5.2 per cent of GDP, going by the trend during April-February'13.

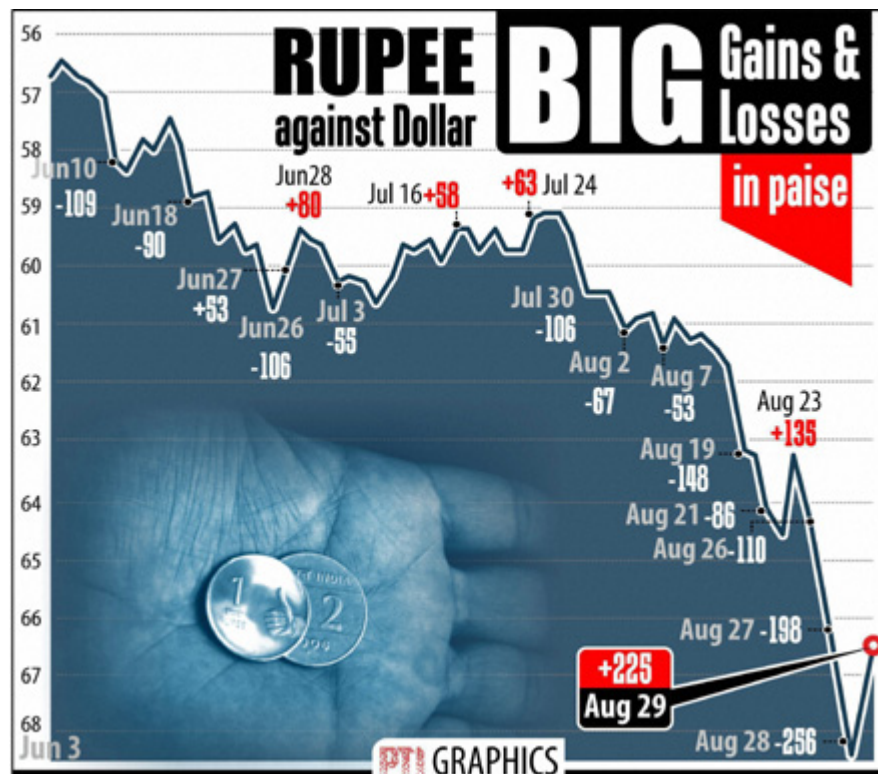
However, this would be possible only by deferring payments of fertilizer subsidy. Hence the underlying fiscal deficit would be 5.4 per cent of GDP.

"Given the government efforts to control fiscal deficit in Apr-Feb, we believe that government would be able to report fiscal deficit at 5.2 per cent of GDP," noted a report by Morgan Stanley.

The US investment bank expects that for FY'14, the government is likely to stay on the course of fiscal consolidation, cutting deficit further by 0.4 per cent of GDP, primarily helped by increase in revenue to GDP.

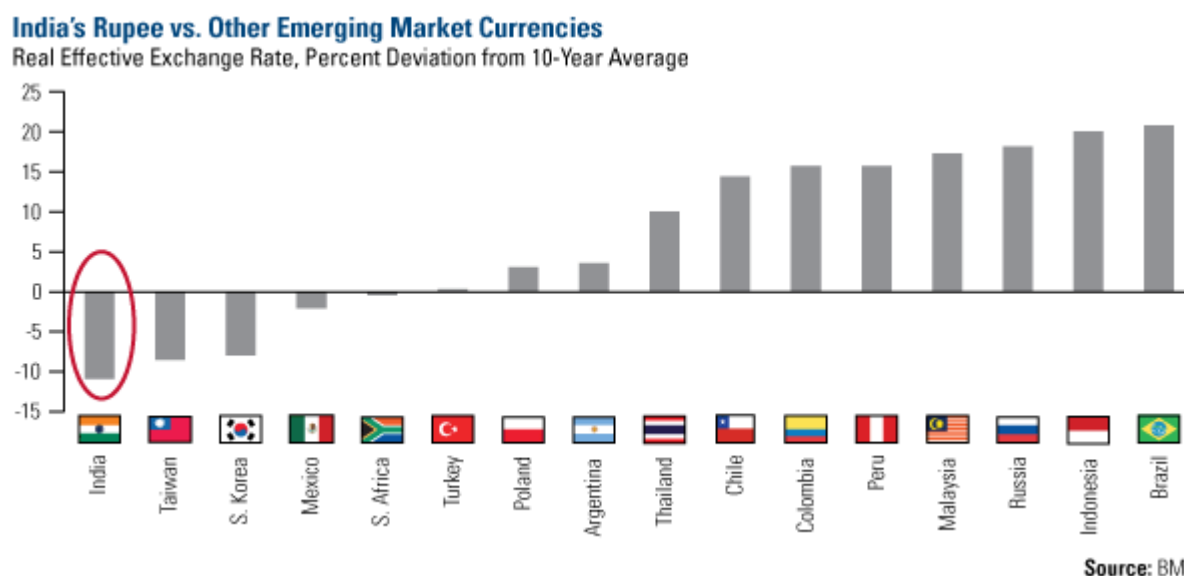
The Current Rupee Fall

The currency market in India has been volatile over the past few months. The Indian rupee slumped to a record low to the dollar on growing worries that foreign investors will continue to sell out of a country facing stiff economic challenges.



The pummeling in markets sent the rupee reeling 3.7% to an all-time low of 68.85 for a time with the currency closing just a touch off that.

Not just India, but various other developing country currencies are falling over time but INR's fall is significant and huge.

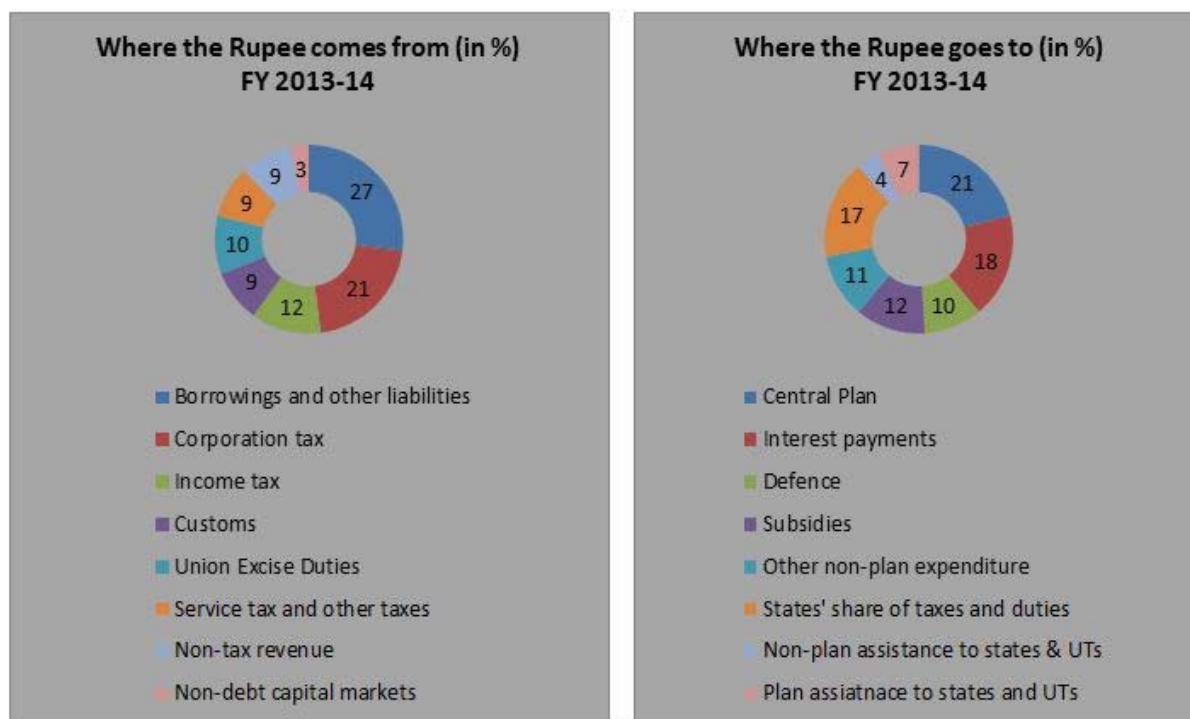


Various factors contributed to the fall:

- The dollar Strength
- Trade Deficit
- Recent Weakness in domestic Equities
- Low GDP growth

The Rupee did recover and currently stands at 63 against the dollar by various steps taken by the Reserve Bank of India.

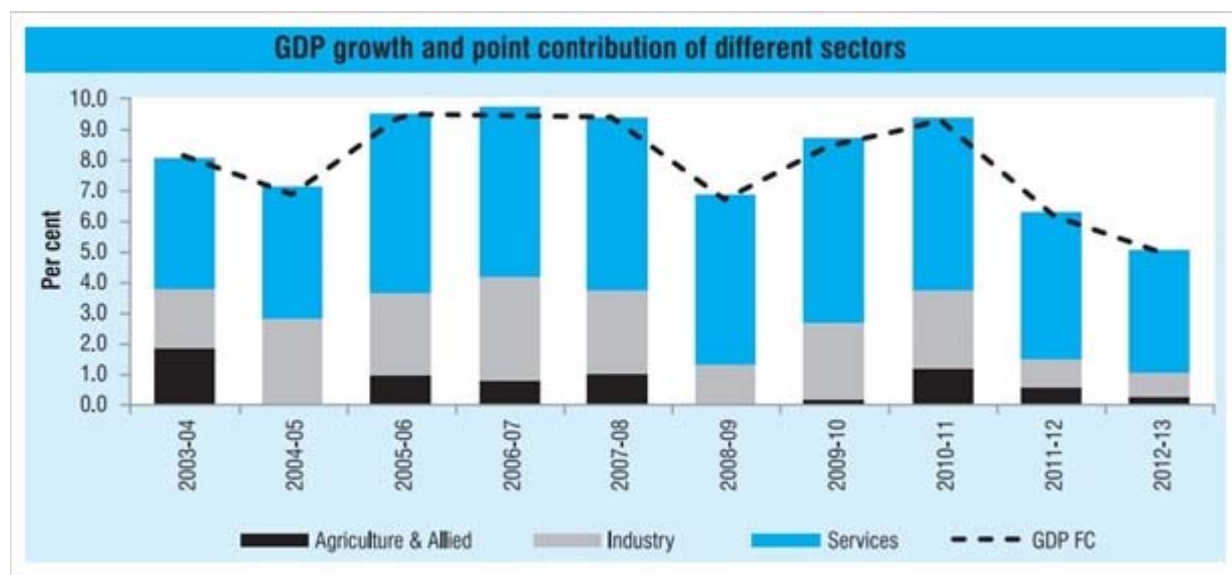
Inflow & Outflow of Rupee



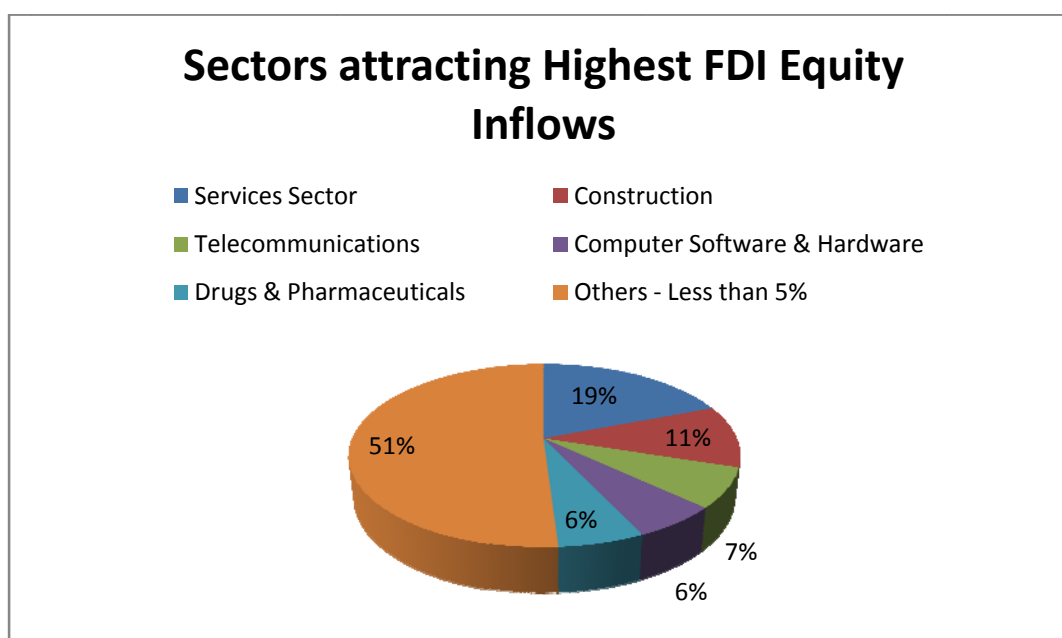
Source: Economic Survey of India, 2012-13

Sectors

The service Industry is the largest industry in India. Over half of the GDP is accounted for by the service industry.

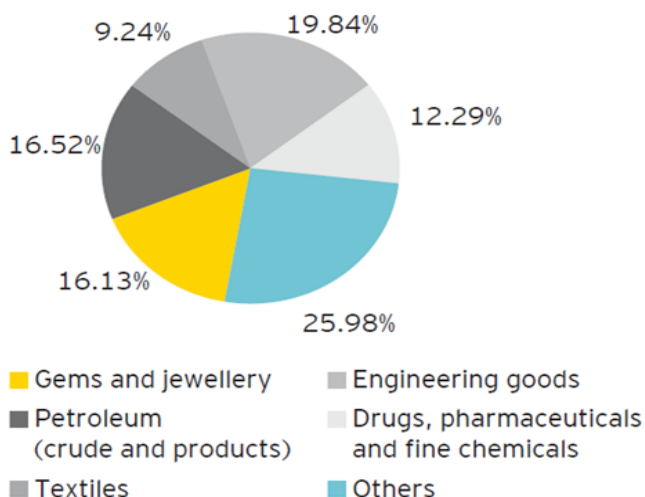


Industry accounts for 28% of the GDP and employs 14% of the total workforce. India is 11th in the world in terms of nominal factory output according to data compiled through CIA World Fact book figures.

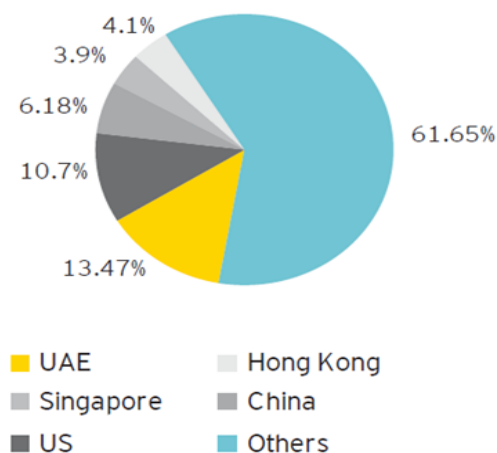


Foreign Trade

Top commodities among India's exports (FY 11)

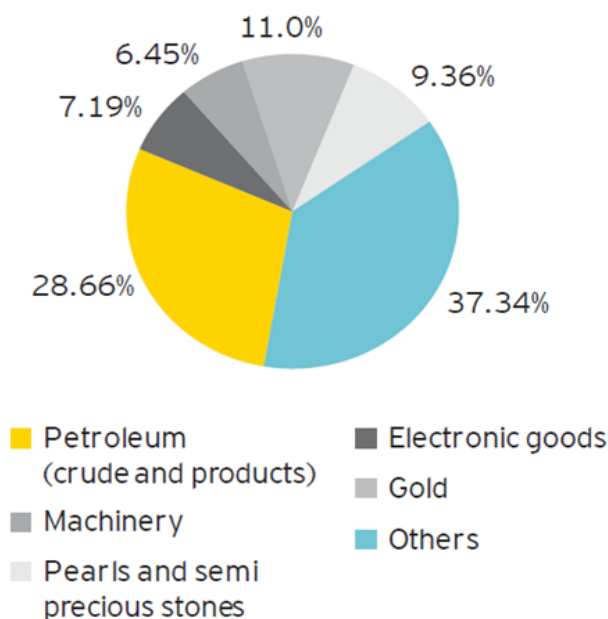


Top destinations for India's exports (FY11)

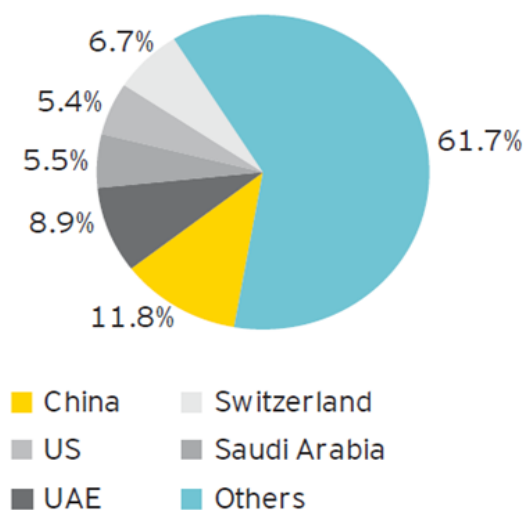


Source: DGCIS, Ministry of Commerce & Industry

Top commodities among India's imports (FY 11)



Top countries for India's imports (FY 11)



Source: DGCIS, Ministry of Commerce & Industry



BUSINESS ENTITIES IN INDIA

Business in India

Types of Entities

A business entity in India can be established as one of the under:

- Sole Proprietorship
- Partnership Firm
- Limited Liability Partnership
- Company

Sole Proprietorship

A sole proprietorship, also known as the sole trader or simply a proprietorship, is a type of business entity that is owned and run by one individual and in which there is no legal distinction between the owner and the business.

The owner receives all profits (subject to taxation specific to the business) and has unlimited responsibility for all losses and debts. Every asset of the business is owned by the proprietor and all debts of the business are the proprietor's. It is a "sole" proprietorship in contrast with partnerships. A sole proprietor may use a trade name or business name other than his or her legal name.

Merits

- easy to organize
- Small Capital
- Flexibility
- Less Legal Formalities

Demerits

- Limited Resources
- Unlimited Liability
- Banks may be a little reluctant on giving loans

Partnership Firm

The Indian Partnership Act, 1932 governs the Partnership Firms in India. A minimum of two partners are required and a maximum of 20 partners are allowed as per the Act for a firm. Registration of firm is not compulsory, though usually done as registration brings many advantages to the firm. Since 'partnership contract' is a 'Concurrent Subject' as per Constitution of India, registration of firms and related work is handled by State Government in each State.

Merits

- Ease of formation
- Close Supervision
- Secrecy
- Flexibility
- Less Legal Compliances
- Protection of Minority Interest

Demerits

- Unlimited liability
- Risk of one acting for all vis-à-vis implied agency
- Non-transferability of interests
- Maximum Limit set to 20 Partners

Dissolution of Firm vs. Dissolution of Partnership

Dissolution of firm means when the firm as a whole ceases to exist whereas dissolution of partnership is wherein only the partnership is dissolved and not the firm as a whole. In the latter situation, a new deed of partnership can be signed and business can be carried on under the same firm.

Dissolution of Firm occurs:

- By Mutual Consent
- By Agreement
- By insolvency of all partners
- Business becomes illegal

Dissolution of Partnership occurs:

- Expiry of term or completion of venture
- Death, Insolvency or retirement of a partner

Limited Liability Partnership

A LLP is a corporate business vehicle that enables professional expertise and entrepreneurial initiative to combine and operate in flexible, innovative and efficient manner, providing benefits of limited liability while allowing its members the flexibility for organizing their internal structure as a partnership.



Merits

- Easy to form
- Body Corporate
- Limited Liability of Partners
- Perpetual succession
- FDI permitted
- Partners are not agents of other partners

Demerits

- Capital Gain tax may arise on converting a general partnership to LLP on not complying with even one of the various conditions.
- Alternate Minimum Tax applicable unlike a general partnership.

Company

A company can be defined as an "artificial person", invisible, intangible, created by or under Law, with a discrete legal entity, perpetual succession and a common seal. It is not affected by the death, insanity or insolvency of an individual member.



Key features of Private Limited Company

- Limited Liability to the extent of holding
- Cannot borrow money from the public
- Even an individual can form a company
- Maximum number of Members is restricted to 200
- Minimum Capital requirement of 1 lac

Key features of Public Limited Company

- Separate Legal Entity
- If listed, governed by the Securities & Exchange Board of India
- Can raise funds from the public
- Minimum Capital requirement of 5 lacs
- No limit on maximum number of members
- Separation of ownership from management
- Freely transferable interests
- A lot of compliances

A comparison between Partnership firms, Company & Limited Liability Partnership is given here under:

Category	Partnership	Company	LLP
Prevailing Law	Partnership is prevailed by 'The Indian Partnership Act, 1932' and various Rules made there under	Companies are prevailed by 'Companies Act, 1956'	Limited Liability Partnership are prevailed by 'The Limited Liability Partnership Act, 2008' and various Rules made there under
Registration	Registration is optional	Registration with Registrar of Companies required.	Registration with Registrar of LLP required.
Creation	Created by Contract	Created by Law	Created by Law
Distinct entity	Not a separate legal entity	Is a separate legal entity under the Companies Act, 1956.	Is a separate legal entity under the Limited Liability Partnership Act, 2008.
Name of Entity	Any name as per choice	Name to contain 'Limited' in case of Public Company or 'Private Limited' in case of Private Company as suffix.	Name to contain 'Limited Liability Partnership' or 'LLP' as suffix.
Cost of Formation	The Cost of Formation is negligible	Minimum Statutory fee for incorporation of Private Company is Rs.6,000/- and minimum Statutory fee for incorporation of Public Company is Rs. 19,000/-	Minimum cost of Formation of LLP is Rs. 800 only, comparatively much lesser than the cost of formation of Company
Perpetual Succession	It does not have perpetual succession as this depends upon the will of partners	It has perpetual succession and members may come and go.	It has perpetual succession and partners may come and go
Charter Document	Partnership Deed is a charter of the firm which denotes its scope of operation and rights and duties of the partners	Memorandum and Article of Association is the charter of the company which defines its scope of operation.	LLP Agreement is a charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP.
Common Seal	There is no concept of common seal in partnership	It denotes the signature of the company and every company shall have its own common seal	It denotes the signature and LLP may have its own common seal, dependant upon the terms of the Agreement
Formalities of Incorporation	In case of registration, Partnership Deed along with form / affidavit required to be filled with Registrar of firms along with requisite filing fee	Various eforms along the Memorandum & Articles of Association are filled with Registrar of Companies with prescribed fees	Various eForms and the LLP Agreement are filed with the Registrar of LLP along with the prescribed Fee.

Time line	It will take 7 days (approx.) to incorporate	It will take 10 days (approx.) to incorporate (inclusive of time taken to obtain DIN)	It will take 10 days (approx.) to incorporate (inclusive of time taken to obtain DPN)
Legal Proceedings	Only registered partnership can sue third party	A company is a legal entity which can sue and be sued	A LLP is a legal entity can sue and be sued
Foreign Participation	Foreign Nationals cannot form Partnership Firm in India	Foreign Nationals can be a member in a Company.	Foreign Nationals can be a Partner in a LLP.
Number of Members	Minimum 2 and Maximum 20	2 to 50 members in case of Private Company and Minimum 7 members in case of Public Company.	Minimum 2 partners and there is no limitation of maximum number of partners.
Ownership of Assets	Partners have joint ownership of all the assets belonging to partnership firm	The company independent of the members has ownership of assets	The LLP independent of the partners has ownership of assets
Rights / Duties / obligation of the Partners / Managing Partners / Directors	Rights / Duties / obligation of the partners are governed by Partnership Deed.	Rights / Duties / obligation of the directors are governed by AOA and resolution passed by shareholders or directors.	Rights / Duties / obligation of the partners are governed by LLP Agreement.
Liability of Partners/Members	Unlimited. Partners are severally and jointly liable for actions of other partners and the firm and liability extend to their personal assets.	Generally limited to the amount required to be paid up on each share.	Limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.
Tax Liability	Income of Partnership is taxed at a Flat rate of 30% plus education cess as applicable.	Income of Company is Taxed at a Flat rate of 30% Plus surcharge as applicable.	Income of LLP is taxed at a Flat rate of 30% plus education cess as applicable.
Principal/Agent Relationship	Partners are agents of the firm and other partners.	The directors act as agents of the company and not of the members	Partners act as agents of LLP and not of the other partners.
Transfer / Inheritance of Rights	Not transferable. In case of death the legal heir receives the financial value of share.	Ownership is easily transferable.	Regulations relating to transfer are governed by the LLP Agreement .
Transfer of Share / Partnership rights in case of death	In case of death of a partner, the legal heirs have the right to get the refund of the capital contribution + share in accumulated profits, if any. Legal heirs	In case of death of member, shares are transmitted to the legal heirs.	In case of death of a partner, the legal heirs have the right to get the refund of the capital contribution + share in accumulated profits, if any. Legal heirs will not become

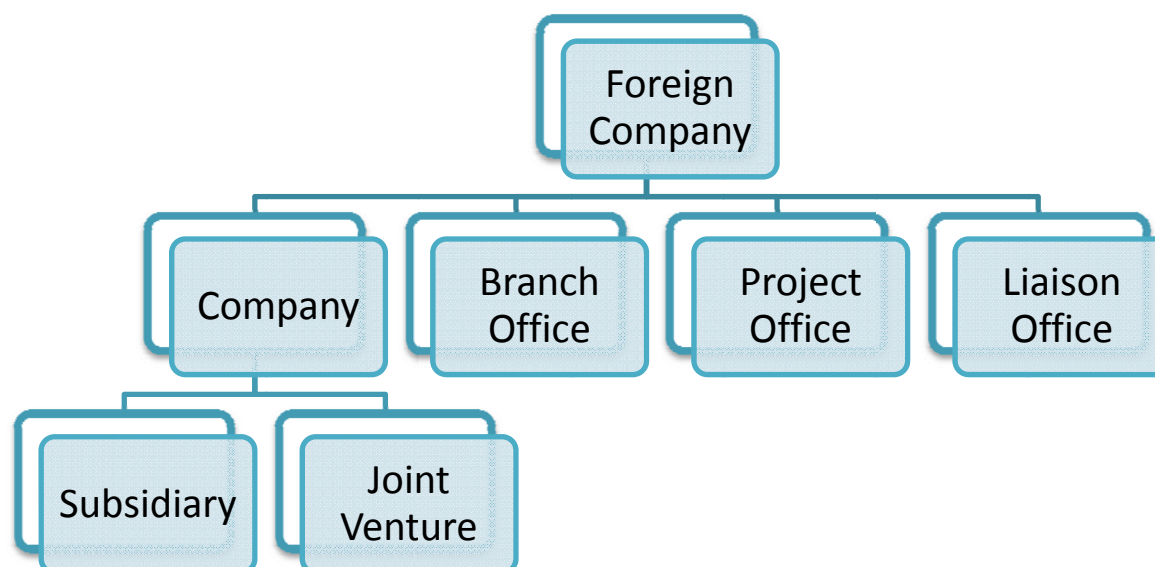
	will not become partners		partners
Director Identification Number(DIN)	The partners are not required to obtain any identification number	Each director is required to have a Director Identification Number before being appointed as Director of any company.	Each Designated Partners is required to have a DIN before being appointed as Designated Partner of LLP.
Digital Signature	There is no requirement of obtaining Digital Signature	As eforms are filled electronically, atleast one Director should have Digital Signatures	As eforms are filled electronically, atleast one Designated Partner should have Digital Signatures.
Dissolution	By agreement, mutual consent, insolvency, certain contingencies, and by court order.	Voluntary or by order of National Company Law Tribunal.	Voluntary or by order of National Company Law Tribunal.
Transferability of Interest	A partner can transfer his interest subject to the Partnership Agreement	A member can freely transfer his interest	A partner can transfer his interest subject to the LLP Agreement
Admission as partner / member	A person can be admitted as a partner as per the partnership Agreement	A person can become member by buying shares of a company.	A person can be admitted as a partner as per the LLP Agreement
Cessation as partner / member	A person can cease to be a partner as per the agreement	A member / shareholder can cease to be a member by selling his shares.	A person can cease to be a partner as per the LLP Agreement or in absence of the same by giving 30 days prior notice to the LLP.
Requirement of Managerial Personnel for day to day administration	No requirement of any managerial; personnel , partners themselves administer the business	Directors are appointed to manage the business and other statutory compliances on behalf of the members.	Designated Partners are responsible for managing the day to day business and other statutory compliances.
Statutory Meetings	There is no provision in regard to holding of any meeting	Board Meetings and General Meetings are required to be conducted at appropriate time.	There is no provision in regard to holding of any meeting.
Maintenance of Minutes	There is no concept of any minutes	The proceedings of meeting of the board of directors / shareholders are required to be recorded in minutes.	A LLP by agreement may decide to record the proceedings of meetings of the Partners/Designated Partners
Voting Rights	It depends upon the partnership Agreement	Voting rights are decided as per the number of shares held by the members.	Voting rights shall be as decided as per the terms of LLP Agreement.
Remuneration of Managerial Personnel for	The firm can pay remuneration to its partners	Company can pay remuneration to its	Remuneration to partner will depend upon LLP

day to day administration		Directors subject to law.	Agreement.
Contracts with Partners/Director	Partners are free to enter into any contract.	Restrictions on Board regarding some specified contracts, in which directors are interested.	Partners are free to enter into any contract.
Maintenance of Statutory Records	Required to maintain books of accounts as Tax laws	Required to maintain books of accounts, statutory registers, minutes etc.	Required to maintain books of accounts.
Annual Filing	No return is required to be filed with Registrar of Firms	Annual Financial Statement and Annual Return is required to be filed with the Registrar of Companies every year.	Annual Statement of accounts and Solvency & Annual Return is required to be filed with Registrar of LLP every year.
Share Certificate	The ownership of the partners in the firm is evidenced by Partnership Deed, if any.	Share Certificates are proof of ownership of shares held by the members in the Company	The ownership of the partners in the firm is evidenced by LLP Agreement.
Audit of accounts	Partnership firms are only required to have tax audit of their accounts as per the provisions of the Income Tax Act	Companies are required to get their accounts audited annually as per the provisions of the Companies Act, 1956,	All LLP except for those having turnover less than Rs.40 Lacs or Rs.25 Lacs contribution in any financial year are required to get their accounts audited annually as per the provisions of LLP Act 2008.
Applicability of Accounting Standards.	No Accounting Standards are applicable	Companies have to mandatorily comply with accounting standards	The necessary rules in regard to the application of accounting standards are not yet issued.
Compromise / arrangements / merger / amalgamation	Partnership cannot merge with other firm or enter into compromise or arrangement with creditors or partners	Companies can enter into Compromise / arrangements / merger / amalgamation	LLP's can enter into Compromise / arrangements / merger / amalgamation
Oppression and mismanagement	No remedy exist , in case of oppression of any partner or mismanagement of Partnership	Provisions providing for remedy against Oppression and mismanagement exists	No provision relating to redressal in case of oppression and mismanagement
Credit Worthiness of organization	Creditworthiness of firm depends upon goodwill and creditworthiness of its partners	Due to Stringent Compliances & disclosures under various laws, Companies enjoys high degree of creditworthiness.	Will enjoy Comparatively higher creditworthiness from Partnership due to Stringent regulatory framework but lesser than a company.



FOREIGN DIRECT INVESTMENT IN INDIA

Foreign Company planning to set up a business in India



Entry Routes

1. Automatic Route

FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities/sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

2. Government Route

FDI in activities not covered under the automatic route requires prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance. Application can be made in Form FC-IL, which can be downloaded from <http://www.dipp.gov.in>. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

Instruments for receiving FDI

Foreign investment is reckoned as FDI only if the investment is made in equity shares, fully and mandatorily convertible preference shares and fully and mandatorily convertible debentures with the pricing being decided upfront as a figure or based on the formula that is decided upfront. Any foreign investment into an instrument issued by an Indian company which:

- gives an option to the investor to convert or not to convert it into equity or
- does not involve upfront pricing of the instrument

as a debt would be reckoned as ECB and would have to comply with the ECB guidelines.

The FDI policy provides that the price/ conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations.

Modes of Payments

An Indian company issuing shares /convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares /convertible debentures by:

- (i) inward remittance through normal banking channels.
- (ii) debit to NRE / FCNR account of a person concerned maintained with an AD category I bank.
- (iii) conversion of royalty / lump sum / technical know-how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares.
- (iv) conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.
- (v) debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration.

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR (B) / Escrow account, the amount shall be refunded. Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

Procedure post FDI made

A two-stage reporting procedure has to be followed:

• On receipt of share application money:

Within 30 days of receipt of share application money/amount of consideration from the non-resident investor, the Indian company is required to report to the Foreign Exchange Department, Regional Office concerned of the Reserve Bank of India, under whose jurisdiction its Registered Office is located, the Advance Reporting Form, containing the following details :

- Name and address of the foreign investor/s;
- Date of receipt of funds and the Rupee equivalent;
- Name and address of the authorised dealer through whom the funds have been received;

- Details of the Government approval, if any; and
- KYC report on the non-resident investor from the overseas bank remitting the amount of consideration.

The Indian company has to ensure that the shares are issued within 180 days from the date of inward remittance which otherwise would result in the contravention / violation of the FEMA regulations.

• **Upon issue of shares to non-resident investors:**

Within 30 days from the date of issue of shares, a report in Form FC-GPR- PART A together with the following documents should be filed with the Foreign Exchange Department, Regional Office concerned of the Reserve Bank of India.

- Certificate from the Company Secretary of the company accepting investment from persons resident outside India certifying that:
 - The company has complied with the procedure for issue of shares as laid down under the FDI scheme as amended from time to time.
- The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of the Reserve Bank and it fulfills all the conditions laid down for investments under the Automatic Route,

OR

- Shares have been issued in terms of SIA/FIPB approval No. ----- dated -----
----- (enclosing the FIPB approval copy)
- Certificate from Statutory Auditors/ SEBI registered Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

Repatriation of funds

All foreign investments are freely repatriable (net of applicable taxes) except in cases where:

- i) the foreign investment is in a sector like Construction and Development Projects and Defence wherein the foreign investment is subject to a lock-in-period; and
- ii) NRIs choose to invest specifically under non-repatriable schemes.

Further, dividends (net of applicable taxes) declared on foreign investments can be remitted freely through an Authorised Dealer bank.

Regulations pertaining to ADR's / GDR's

- Indian companies can raise foreign currency resources abroad through the issue of ADRs/ GDRs, in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India there under from time to time.
- A company can issue ADRs / GDRs, if it is eligible to issue shares to persons resident outside India under the FDI Scheme. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.
- Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier.
- After the issue of ADRs/GDRs, the company has to file a return in Form, as amended from time to time. The company is also required to file a quarterly return in Form DR-Quarterly as indicated in the RBI Notification *ibid*.
- There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets.
- Erstwhile OCBs which are not eligible to invest in India and entities prohibited to buy, sell or deal in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.
- The pricing of ADR / GDR issues including sponsored ADRs / GDRs should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

Issue of Debentures & FCCB

Debentures which are fully and mandatorily convertible into equity within a specified time would be reckoned as part of share capital under the FDI Policy.

FCCBs can be issued by Indian companies in the overseas market in accordance with the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

The FCCB being a debt security, the issue needs to conform to the External Commercial Borrowing guidelines, issued by RBI.

Foreign Portfolio Investment

- Investment by SEBI registered FIIs is regulated under SEBI (FII) Regulations, 1995 and Regulation 5(2) of FEMA Notification No.20 dated May 3, 2000, as amended from time to time. FIIs include Asset Management Companies, Pension Funds, Mutual Funds, Investment Trusts as Nominee Companies, Incorporated / Institutional Portfolio Managers or their Power of Attorney holders, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies.
- SEBI acts as the nodal point in the registration of FIIs. The Reserve Bank of India has granted general permission to SEBI Registered FIIs to invest in India under the Portfolio Investment Scheme (PIS).



- Investment by SEBI registered FIIs and its sub accounts cannot exceed 10per cent of the paid up capital of the Indian company. However, in case of foreign corporate or High Net worth Individuals (HNIs) registered as sub accounts of an FII, their investment shall be restricted to 5 per cent of the paid up capital of the Indian company. All FIIs and their sub-accounts taken together cannot acquire more than 24 per cent of the paid up capital of an Indian Company. An Indian company can raise the 24 per cent ceiling to the sectoral cap / statutory ceiling, as applicable, by passing a resolution by its Board of Directors followed by passing a Special Resolution to that effect by their General Body.

The Indian company has to intimate the raising of the FII limit to the Reserve Bank to enable the Bank to notify the same on its website for larger public dissemination.

- SEBI registered FIIs/sub-accounts of FIIs can invest in primary issues of Non-Convertible Debentures (NCDs)/ bonds only if listing of such bonds / NCDs is committed to be done within 15 days of such investment. In case the NCDs/bonds issued to the SEBI registered FIIs / sub-accounts of FIIs are not listed within 15 days of issuance to the SEBI registered FIIs / sub-accounts of FIIs, for any reason, then the FII/sub-account of FII shall immediately dispose of these bonds/NCDs either by way of sale to a third party or to the issuer and the terms of offer to FIIs / sub-accounts should contain a clause that the issuer of such debt securities shall immediately redeem / buyback the said securities from the FIIs/sub-accounts of FIIs in such an eventuality.
- Non- Resident Indian (NRIs) and Persons of Indian Origin (PIOs) can purchase or sell shares/ fully and mandatorily convertible debentures of Indian companies on the Stock Exchanges under the Portfolio Investment Scheme. For this purpose, the NRI/ PIO has to apply to a designated branch of a bank, which deals in Portfolio Investment. All sale/ purchase transactions are to be routed through the designated branch.
- An NRI or a PIO can purchase shares up to 5 per cent of the paid up capital of an Indian company. All NRIs/PIOs taken together cannot purchase more than 10 per cent of the paid up value of the company. This limit can be increased by the Indian company to 24 per cent by passing a General Body resolution. The Indian company has to intimate the raising of the NR Limit to the Reserve Bank to enable the Bank to notify the same on its website for larger public dissemination. The sale proceeds of the repatriable investments can be credited to the NRE/ NRO, etc. accounts of the NRI/ PIO, whereas the sale proceeds of non-repatriable investment can be credited only to NRO accounts. The sale of shares will be subject to payment of applicable taxes.

Investment in other securities

Under the FEMA Regulations, only NRIs and SEBI registered FIIs are permitted to purchase Government Securities/Treasury bills and corporate debt. The details are as under:

A. A Non-resident Indian can purchase without limit,

(1) on repatriation basis

- i) Dated Government securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
- ii) Bonds issued by a public sector undertaking (PSU) in India; and

iii) Shares in Public Sector Enterprises being disinvested by the Government of India.

(2) on non-repatriation basis

i) Dated Government securities (other than bearer securities) or treasury bills or units of domestic mutual funds;

ii) Units of Money Market Mutual Funds in India; and

iii) National Plan/Savings Certificates.

B. A SEBI registered FII may purchase, on repatriation basis, dated Government securities/ treasury bills, listed non-convertible debentures/ bonds issued by an Indian company and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognized stock exchange in India.

Purchase of debt instruments including Upper Tier II instruments issued by banks in India and denominated in Indian Rupees by FIIs are subject to limits notified by SEBI and the Reserve Bank from time to time. The present limit for investment in Corporate Debt Instruments like non-convertible debentures / bonds by FIIs is USD 45 billion , which constitutes of the:

Sovereign Wealth Funds (SWFs), multilateral agencies, endowment funds, insurance funds, pension funds and foreign Central Banks to be registered with SEBI are also allowed to invest in Government securities within this enhanced limit of USD 20 billion.

NRI & SEBI registered FII

SEBI registered FIIs and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India and denominated in Indian Rupees, subject to the following conditions:

- a. Investment by all FIIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue and investment by individual FII should not exceed the limit of 10 per cent of each issue.
- b. Investments by all NRIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of each issue.
- c. Investment by FIIs in Rupee denominated Debt Capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt instruments.

- d. Investment by NRIs in Rupee denominated Debt Capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.
- e. Investment by FIIs in Rupee denominated Upper Tier II Instruments raised in Indian Rupees will be within the limit prescribed by the SEBI for investment in corporate debt instruments.
- f. The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated Authorised Dealer banks respectively, to the Reserve Bank through the soft copy of the Forms LEC (FII) and LEC (NRI).

Foreign Venture Capital Investments

- A SEBI registered Foreign Venture Capital Investor has general permission from the Reserve Bank of India to invest in a Venture Capital Fund (VCF) or an Indian Venture Capital Undertaking (IVCU), in the manner and subject to the terms and conditions specified in Schedule 6 of RBI Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. These investments by SEBI registered FVCI, would be subject to the SEBI regulation and sector specific caps of FDI.
- FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement in units of schemes / funds set up by a VCF. At the time of granting approval, the Reserve Bank permits the FVCI to open a Foreign Currency Account and/ or a Rupee Account with a designated branch of an AD Category – I bank.
- FVCIs allowed investing in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes / funds set up by a VCF) by way of private arrangement / purchase from a third party also. FVCIs are also allowed to invest in securities on a recognized stock exchange.
- The purchase / sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller.
- AD Category – I banks can offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments has to be deducted from the eligible cover to arrive at the actual cover that can be offered.

Liaison Office / Representative Office

Liaison Office (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India.

Opening of Liaisoning Office in India



Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. A Liaison Office can undertake the following activities in India:

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

Foreign Insurance companies can establish Liaison Offices in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA). Similarly, foreign banks can establish Liaison Offices in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), Reserve Bank of India.

Branch Office

Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent / group companies and undertake the following activities in India:

- i. Export / Import of goods.
- ii. Rendering professional or consultancy services.
- iii. Carrying out research work, in areas in which the parent company is engaged.
- iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v. Representing the parent company in India and acting as buying / selling agent in India.
- vi. Rendering services in information technology and development of software in India.
- vii. Rendering technical support to the products supplied by parent/group companies.
- viii. Foreign airline / shipping company.

Normally, the Branch Office should be engaged in the activity in which the parent company is engaged.

Note:

- a. Retail trading activities of any nature is not allowed for a Branch Office in India.
- b. A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
- c. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.
- d. Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is effected :
 - a. A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year;
 - b. A Chartered Accountant's certificate certifying -
 - i. the manner of arriving at the remittable profit
 - ii. that the entire remittable profit has been earned by undertaking the permitted activities
 - iii. that the profit does not include any profit on revaluation of the assets of the branch.

Project Office

The Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

- i. the project is funded directly by inward remittance from abroad; or
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or
- iii. the project has been cleared by an appropriate authority; or
- iv. a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

However, if the above criteria are not met or if the parent entity is established in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, such applications have to be forwarded to the Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai for approval.

AD Category – I banks can open **non-interest** bearing Foreign Currency Account for Project Offices in India subject to the following:

- i. The Project Office has been established in India, with the general / specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority concerned.
- ii. The contract, under which the project has been sanctioned, specifically provides for payment in foreign currency.
- iii. Each Project Office can open **two Foreign Currency Accounts**, usually one denominated in USD and other in home currency, provided both are maintained with the same AD category–I bank.
- iv. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent/ Group Company abroad or bilateral / multilateral international financing agency.
- v. The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the branch concerned of the AD. Further, the Accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD banks.
- vi. The Foreign Currency accounts have to be closed at the completion of the Project.

Facts & Figures

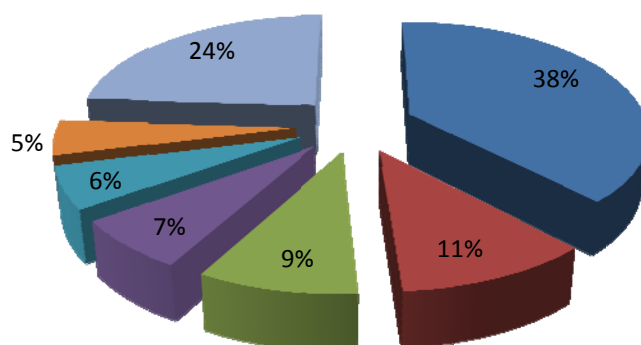
CUMULATIVE FDI FLOWS INTO INDIA (2000-2013):

Total FDI inflows (from April, 2000 to June, 2013):

1.	Cumulative Amount Of FDI Inflows (Equity inflows + 'Re-invested earnings' +Other Capital')	USD 299,220 million
2.	Cumulative Amount Of FDI Equity Inflows (excluding, amount remitted through RBI'S-+NRI Scheme)	USD 198,679 Million

Share of Top Investing Countries FDI Equity Inflows

■ Mauritius ■ Singapore ■ U.K. ■ Japan ■ U.S.A. ■ Netherlands ■ Others - Less than 5%



FDI Inflows during Financial Year 2013-2014 (From April, 2013 To June, 2013):

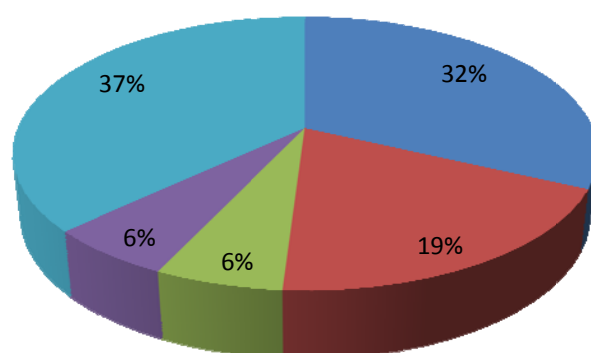
1.	Total FDI Inflows Into India (Equity inflows + 'Re-invested earnings' + 'Other capital') (as per RBI's Monthly bulletin dated: 12.08.2013)	USD 9,142 million
2.	FDI Equity Inflows	USD 5,397 million

FDI Equity Inflows (Month-Wise) During the Financial Year 2013-2014:

Financial year 2013-2014 (April –March)	Amount of FDI Equity inflows (in USD Million)
April,2013	2,322
May,2013	1,1631
June,2013	1,441
2013-2014 (from April ,2013 to june,2013)#	5,397
2012-2013 (from April, 2012 to june,2012)#	4,428
% age growth Over last year	(+) 22%

Statement on RBI's Regional Offices (with state covered) Received FDI Equity Inflows

■ Mumbai ■ New Delhi ■ Chennai ■ Bangalore ■ Others - Less than 5%





INDIAN LAWS

Indian Laws

There are various laws in India and they govern their respective areas of law. A list of important is given here under:

Sr. No.	Particulars	Governed by the law
1	All types of Companies	Companies Act, 2012
2	Partnership Firms	Indian Partnership Act, 1932
3	Limited Liability Partnerships	Limited Liability Partnership Act, 2008
4	Income Tax	Income Tax Act, 1961
5	Service Tax	Chapter V of the Finance Act, 1994
6	Value Added Tax (VAT)	Various state VAT Acts (For e.g.: VAT in Maharashtra is governed by MVAT)
7	Foreign exchange Transactions	Foreign Exchange Management Act (FEMA) & RBI guidelines.
8	Excise	Excise Act, 1944
9	Customs	Customs Act, 1962

The Indian Law structure is vast. The recent law, making news was the passing of the Companies Bill, 2012 in the parliament. All companies were governed by the Companies Act, 1956 which after over half a century has been amended and now is the Companies Act, 2012.

Key features of The Companies Act, 2013 (Proposed)

- Incorporation of a one person company has been permitted
- Number of maximum members in a Private Limited Company has been increased from 50 to 200.
- Listed companies shall have atleast $1/3^{\text{rd}}$ of the total directors as independent directors. A Nominee Director cannot be regarded as an independent director.
- Appointment of atleast one woman director on the board of prescribed classes of companies has been made mandatory.
- Appointment of atleast one Resident Indian (Stayed in India for over 182 days in the previous year) is necessary.
- A person can hold directorship of up to 20 companies of which not more than 10 can be public companies.
- A listed company cannot appoint an individual auditor for more than 5 years.
- A listed company cannot appoint a firm for more than 2 consecutive 5 year periods.
- Corporate Social Responsibility (CSR) has been made mandatory for a company having a net worth of over 500 Cr or more, or a turnover of 1,000 Cr or more or a net profit of 5 Cr or more. 2% of the average net profits of three preceding years, shall be spent towards the Corporate Social Responsibility Policy.



- The provision for establishment of a Serious Fraud Investigation Office (SFIO) Central Government is another feature. The SFIO will have a right to arrest individuals in case of frauds.
- Financial year will be uniform i.e. April to March.
- Restriction on buy back of shares of one year from the last buy back.
- Voting permitted through electronic means.
- Director' remuneration capped at 5% of the net profits of the Company.
- The concept of Dormant Company has been introduced.
- Special courts will be incorporated for speedy trials.

These are the various key features as amended and passed by both houses of the parliament.



TAXES IN INDIA

Tax System in India

India has a well developed tax structure with the authority to levy taxes divided between the Union Government and the State Governments. The Union Government levies direct taxes such as personal income tax and corporate tax, and indirect taxes like custom duties, excise duties, service tax and central sales tax. The states are empowered to levy state sales tax apart from various other local taxes like entry tax, octroi and others.

Various Taxes, their governing laws and authorities are mentioned in the table below:

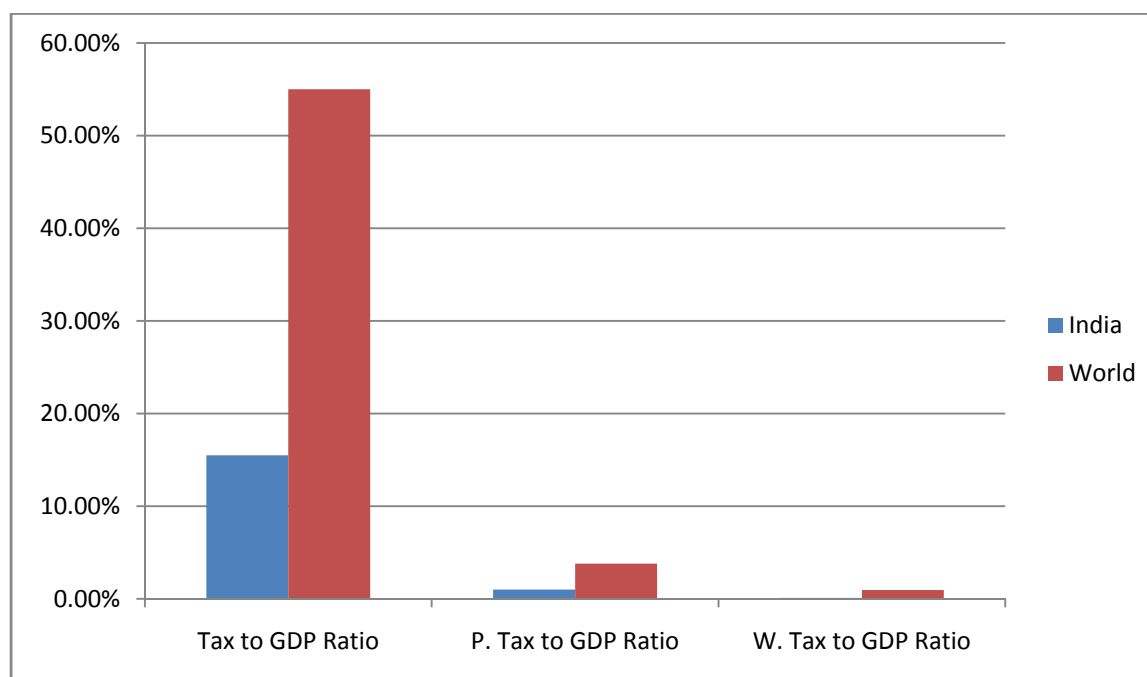
Tax	Government Law	Authority
Direct Tax		
• Income Tax	Income Tax Act, 1961	Central Board of Direct Taxes (CBDT)
• Wealth Tax	Wealth Tax Act, 1957	Central Board of Direct Taxes (CBDT)
• Gift Tax	Not Applicable	
Indirect Tax		
• Central Excise	Central Excise & Salt Act, 1944	Central Board of Excise & Customs (CBEC)
• Customs	Customs Act, 1962	Central Board of Excise & Customs (CBEC)
• Service Tax	Finance Act, 1994	Central Board of Excise & Customs (CBEC)

Revenue collections remained sluggish at 61 per cent of budget estimates during April-December 2012 (63.1 per cent in the previous year). The growth in collection of corporation tax and excise duties remained modest due to continued growth moderation, while customs duty collections were adversely impacted, reflecting the deceleration in imports. Collections under personal income tax, however, remained buoyant partly due to lower refunds compared to previous year.

Direct Taxation

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

Tax to GDP ratio



Corporate Tax

Companies resident in India are taxed on their worldwide income arising from all sources in accordance with the provisions of the Income Tax Act. 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.

Company	Where taxable income exceeds INR 10 million	Other cases
Domestic Company	32.445% (30% plus surcharge of 5% and education cess of 3%)	30.90% (30% plus education cess of 3%)
Foreign Company	42.024% (40% plus surcharge of 2% and education cess of 3%)	41.20% (40% plus education cess of 3%)

Dividend Distribution Tax (DDT)

- Dividend income is exempt in the hands of the shareholders.
- However, DDT is levied on companies declaring dividends. The effective DDT rate is 16.23% (15% plus 5% surcharge and education cess of 3%).
- An exemption from DDT has been granted for profits of SEZ developers.
- In order to mitigate the cascading effect of DDT, it is also provided that any dividend received by a domestic company during any financial year from its subsidiary shall be allowed to be reduced from the dividend to be paid/distributed/declared by such a domestic company for the purpose of computation of DDT, provided the following conditions are fulfilled:
 - The dividend so received by the domestic company had been subject to DDT;
 - The domestic company is not the subsidiary of any other company.

Minimum Alternate Tax (MAT)

Normally, a company is liable to pay tax as computed under the Income Tax Act. However, many times companies would show a book profit as per the companies Act, declare dividends to shareholders, but show a loss when computed as per the Income tax Act and not pay tax. Such companies are often called Zero Tax Companies. To bring these companies under the umbrella of tax payers, MAT was introduced wherein if a company discloses book profit as per books but shows a loss under the income tax computation; it will have to pay MAT the adjusted book profit.

- MAT at 18.50%, plus applicable surcharge and education cess, of book profits is levied on companies whose tax payable under normal income tax provisions is less than 18.50% of book profits (with the object of bringing zero tax companies under the tax net).
- Further, MAT is not applicable to SEZ developers/units for income arising on or after 1 April 2005. The current effective MAT rates are as follows:

Company	Where taxable income exceeds INR 10 million	Other cases
Domestic Company	20.008% (18.50% plus surcharge of 5% and education cess of 3%)	19.055% (18.50% plus education cess of 3%)
Foreign Company	19.436% (18.50% plus surcharge of 2% and education cess of 3%)	19.055% (18.50% plus education cess of 3%)

- A credit of such tax paid under MAT provisions is allowed against the tax liability which arises in the subsequent ten years under the normal provisions of the Income Tax Act.
- Unadjusted MAT credit can be carried forward till the tenth year following the year in which the credit arises.

Capital Gain Tax

Sr. No.	Particulars	Tax Rates*	
		Tax Residents	Non residents
a)	Short-term capital assets (other than (b) below)#	Normal corporate/ individual tax rates	Normal corporate/ individual tax rates
b)	Short-term capital assets-listed equity shares and units of equity oriented funds which have been charged to Securities Transaction Tax (STT)	15.00% (u/s 111A of the Income Tax Act, 1961)	15.00% (u/s 111A of the Income Tax Act, 1961)
c)	Long-term capital assets-listed equity shares in a company or unit of an equity oriented fund which have been charged to STT	Exempt (u/s 10(38) of the Income Tax Act, 1961)	Exempt (u/s 10(38) of the Income Tax Act, 1961)
d)	Long-term capital assets- listed securities (other than (c) above)**	10% (u/s 112 of the Income Tax Act, 1961)	10% (u/s 112 of the Income Tax Act, 1961)
e)	Other long-term capital assets	20% (u/s 112 of the Income Tax Act, 1961)	20% (u/s 112 of the Income Tax Act, 1961)

*An applicable surcharge and education cess would also be levied on the above tax rates.

#A short-term capital asset is one which is held for a period of not more than 36 months (not more than 12 months in the case of shares, listed securities, units of mutual funds and zero coupon bonds).

** Indexation of cost of acquisition and improvement of a long-term capital asset of any nature (other than debentures) is available to residents.

However, the benefit of indexation is available to non-residents only on long-term capital assets other than shares/ debentures of an Indian company acquired in foreign currency.

Further, long term capital assets being listed securities, including equity shares in a company or unit of an equity oriented fund, which have not been charged to STT, may be taxed @ 10% (plus applicable surcharge and education cess) without giving any indexation benefit at the option of the taxpayer.

Compliances

- The Indian tax year extends from 1 April of a year to 31 March of the subsequent year. A corporation tax year also ends on the same date.
- All incomes accruing or arising in India are taxable in India to a nonresident taxpayer subject to the Double Taxation Avoidance Agreement (DTAA) with the country of residence of the taxpayer
- The taxable income is called “Total Income”, which is computed after adding certain disallowances, such as loss on sale of assets and miscellaneous expenditure written off and the reduction of certain allowances/benefits from the book profits.
- All corporations (except those who are required to submit transfer pricing certificate in Form 3CEB in respect of international transactions) are required to file a return of income (ROI) by 30 September, even in the event of loss.
- However, corporations who are required to submit transfer pricing certificate in Form 3CEB in respect of international transactions are required to file an ROI by 30 November.
- Non-resident corporations must file an ROI in India if they earn income in India, or they have a physical presence/economic nexus in India.
- Corporate tax liability needs to be estimated and discharged by way of advance tax u/s 208 of the Income Tax Act, 1961 in four installments on 15 June, 15 September, 15 December and 15 March, every year.
- Late filing of ROI and delay in payment/shortfall in taxes are liable to attract penal interest at prescribed rates. Interest is generally imposed on the balance of the unpaid tax due and on underpayment of the advance tax due.

Depreciation as per Income Tax Act

Depreciation is allowed separately at the following rates for computing taxable income:

Asset	Rate of Depreciation
Factory Building	10%
Furniture and fittings	10%
Plant and machinery (general)	15%
Computers (including software)	60%
Motorcars, other than those used in a business of running them on hire	15%
Intangible assets (such as know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of a similar nature)	25%

For certain priority items, such as energy saving devices and pollution control equipment, depreciation is allowed at higher rates.

Undertakings engaged in the business of generation or generation and distribution of power have the option of claiming tax depreciation at the above rates or on a straight-line basis at rates prescribed in the Income-tax Rules, 1962. The rates vary from 1.95% to 33.40%.

- In the case of a new asset, depreciation for the full year is allowed only if the asset is put to use for 180 days or more during the fiscal year; otherwise depreciation is allowed at only half the prescribed rate.
- **Additional Depreciation:**
 - In addition, depreciation of 20% of the actual cost of a new plant or machinery acquired and installed after 31 March 2005 is allowed to a taxpayer engaged in the business of manufacture or production of any article or product in the year in which such a new plant or machinery is acquired and installed.

➤ **Investment Allowance (Inserted vide the Finance Act, 2013)**

- For boosting investment in new Plant and Machinery by a company engaged in the activity of manufacture or production of any article or thing, a deduction at the rate of 15% of the cost of new Plant and Machinery acquired and installed is proposed.
- The cost of new Plant and Machinery acquired and installed during the period 1st April, 2013 to 31st March, 2015 should exceed Rs. 100 Crores.
- Deduction would be available over a period of two years calculated in the following manner:
 - a) Deduction in AY 2014-2015 will be 15% of the total cost of the new Plant and Machinery acquired and installed during the year if it exceeds Rs. 100 Crores.
 - b) Deduction in AY 2015-2016 will be 15% of the total cost of the new Plant and Machinery acquired and installed in FY 2013- 2014 and FY 2014-2015 as reduced by deduction allowed under clause (a) above.
- The deduction mentioned above is in addition to depreciation and additional depreciation.

Individual Taxation

- Taxation in India is based on the residential status of a person and not on citizenship.
- The residential status of a person under Income-tax Act is determined solely based on his or her physical presence in India regardless of purpose of the stay.
- A person may qualify to be a Resident and Ordinarily Resident (ROR), Resident but not Ordinarily Resident (RNOR) or a Non-Resident (NR) in India.
- A foreign national seconded to work in India, in general, becomes liable to Indian income tax.
- Other taxes to which an individual may become liable are capital gains tax levied on disposal of assets in India and wealth tax levied on possession of taxable wealth.
- Where an individual is treated as a tax resident of another country, that individual qualifies for relief from Indian tax under a double taxation agreement between that country and India.
- Most Agreements set various tests to determine in which of the two countries an individual is resident for taxation purposes.
- Where an individual is doubly taxed in India, credit of taxes paid overseas on such doubly taxed income is available in accordance with the relevant Agreement.

Scope

- Salary income is subject to income tax in India if services are rendered in India, irrespective of whether salary is received in India or not.
- Other incomes are subject to income tax if received or are deemed to be received in India, or accrue or arise or are deemed to accrue or arise in India.
- However, ROR income that accrues or arises outside India will also be subject to tax in India. In other words, an expatriate who is ROR is taxed on his/her worldwide income.

Slab Rates

At the end of each year, a tax return has to be filed with the income tax authorities in the prescribed form. The return is to be filed at the latest by July 31 of the relevant assessment year.

The following Income Tax Rates are applicable for the **Financial Year 2012-13 i.e. A/Y 2013-14**. Education Cess @ 2% and SHEC @ 1% shall be levied on the Tax computed using the Income Tax Rates given below while filing the Income Tax Return. No Surcharge is applicable in case of Individuals and HUF's.

1. For Individuals below 60 years of age & HUF

Income Tax Slabs	Income Tax Rates
Where Total Income does not exceed Rs. 2,00,000	NIL
Where the Total Income exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000	10% of the Amount by which it exceeds Rs. 2,00,000
Where the Total Income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	20% of the Amount by which it exceeds Rs. 5,00,000
Where the Total Income exceeds Rs. 10,00,000	30% of the Amount by which it exceeds Rs. 10,00,000

2. For all Senior Citizens above 60 years of Age

Income Tax Slabs	Income Tax Rates
Where Total Income does not exceed Rs. 2,50,000	NIL
Where the Total Income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000	10% of the Amount by which it exceeds Rs. 2,50,000
Where the Total Income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	20% of the Amount by which it exceeds Rs. 10,00,000
Where the Total Income exceeds Rs. 10,00,000	30% of the Amount by which it exceeds Rs. 10,00,000

3. For all Senior Citizens above 80 Years of Age

Income Tax Slabs	Income Tax Rates
Where Total Income does not exceed Rs. 5,00,000	NIL
Where the Total Income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	20% of the Amount by which it exceeds Rs. 5,00,000
Where the Total Income exceeds Rs. 10,00,000	30% of the Amount by which it exceeds Rs. 10,00,000

For Firms and Local Authority

Income Tax Slabs Rates won't apply in this case and Tax @ 30% flat shall be computed on the Total Income. Surcharge shall not be levied on Income of Firms and Local Authorities but shall be levied on the Total Income Tax of Domestic Companies @ 5% provided that the Total Income of the Domestic Company exceeds Rs. 1 Crore.

Wealth Tax

Wealth tax is charged net wealth as on 31 March every year (referred to as the valuation date). Wealth tax is charged both on individuals and companies at the rate of 1% of the amount by which the “net wealth” exceeds INR 3 million.

The term “net wealth” broadly represents the value of the excess of certain assets over the debts concerned. Assets include guest houses and residential houses, motorcars, jewellery / bullion / utensils of gold and silver, yachts, boats, aircraft, urban land and cash in hand. A debt is an obligation to pay a certain sum of money incurred in relation to those assets which are included in the “net wealth”.

Gift Tax

There is no gift tax liability in India. However, any sum of money aggregating to Rs 50,000 or more is received without consideration by an individual from any person(s) would be subject to tax as “Income from other sources”. This would not apply to any sum of money received:

- from any relative (spouse, brother, sister, brother or sister of the spouse or any lineal ascendants or descendants);
- on the occasion of the marriage of the individual;
- under a will or by way of inheritance;
- in the expectation of the death of the donor.

Double Tax Avoidance Agreement (DTAA)

India has signed Double Tax Avoidance Agreements with 88 countries worldwide. The DTAA override the Indian Income-tax Act provisions to the extent that they are more beneficial to the assessee.

Relief is granted in respect of income chargeable to tax, both under the Income Tax Act of India and the domestic tax laws in that other country, in order to promote mutual economic relations, trade and investment.

Recently signed



India Signed a New DTAA with Malta at Valetta

India and Malta have renegotiated their Double Taxation Avoidance Agreement (DTAA) and the Protocol to bring it in line with international standards, change in domestic laws and changed economic scenario.

The DTAA and the Protocol between the two countries for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income is in force since February 8, 1995.

On April 8, 2013, India and Malta signed the new DTAA at Valetta, Malta. The DTAA was signed by the Preneet Kaur, Minister of State for External Affairs of India and George Vella, Foreign Minister of Malta.

Once the new DTAA enters into force, it will stimulate the flow of capital, technology and personnel between both the countries and will further strengthen the economic relationship.

It also provides tax stability and reduces any obstacles in providing mutual cooperation between India and Malta, the finance ministry said in a statement today.

India signs tax treaty with Albania

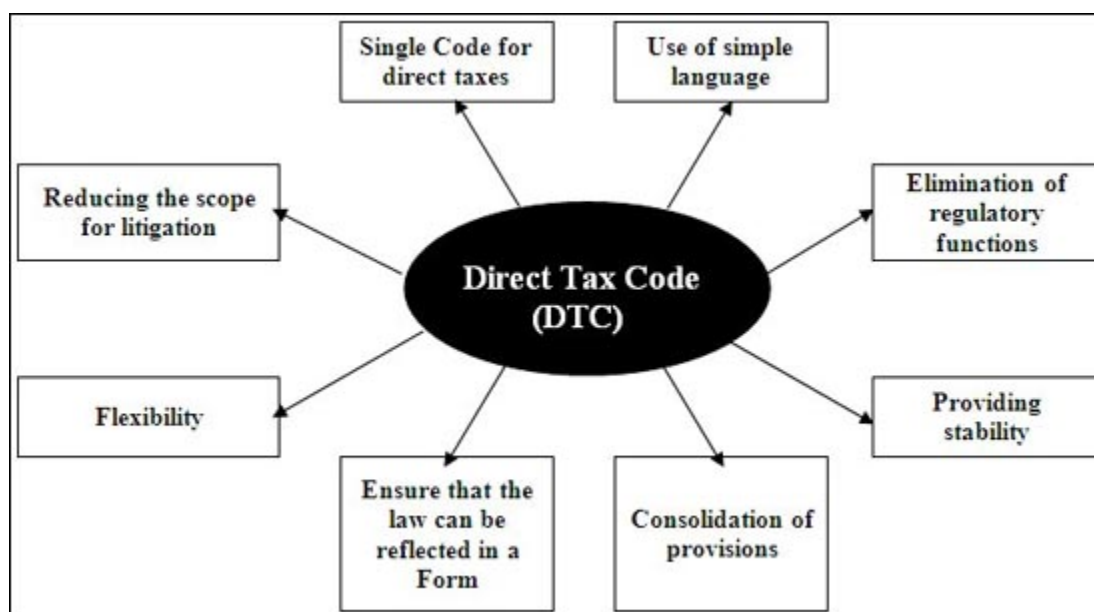


The Government of India (GoI) has signed an agreement with the Government of Albania on 8 July 2013 for avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (tax treaty). The said tax treaty is expected to provide tax stability to the residents of India and Albania, facilitate mutual economic cooperation and stimulate the flow of investment, technology and services between India and Albania.

Direct Tax Code (DTC)

The current Income tax act, 1961 will soon be replaced by the Direct tax Code once passed in the parliament.

There seem to be three key objectives behind the introduction of the DTC: simplification of language, resulting in lesser litigation; a law which promotes inclusive growth and yet retains the incentives for businesses to make profits; and allow businesses to function in the free market economy but with proper regulations.



Key Points of the Draft Bill

Major gains for individuals

Personal income tax, almost all salaried persons will agree, in our country is one of the highest in the world. More open and honest an employer is in terms of disclosing remunerations, worse it is for the employees because taxable income goes up. The present system thus rewards dishonesty and non-disclosure of income by way of lower tax. The Tax Code will try to address these issues by significantly lowering income tax and by disallowing all tax-free perks. It proposed exemption of income tax on specified savings up to Rs 3 lakh a year as against the present deduction limit of Rs 1 lakh for all types of savings under 80C of the IT Act. The catch, however, is that a few long term investments like public provident fund, employer's provident fund, insurance premium in pension (annuity) schemes, Post Office National Savings Scheme etc will be eligible for tax exemption.

But contributions to fixed deposits, interest and principal payment on housing loans, educational expenses of dependents, and a host of other forms of savings will not qualify as eligible for tax savings. The thrust, clearly, is to induce long term savings for future needs.

The Tax Code also raised income tax slabs significantly, lowering the tax burden on individuals. The draft proposed exempting the general tax payer from paying tax for income up to Rs 1.60 lakh a year.

According to the proposal, a tax payer will pay at the rate of 10 per cent for income above Rs 1.60 lakh and up to Rs 10 lakh, at 20 per cent on income between Rs 10 lakh and Rs 25 lakh and at 30 per cent for income beyond Rs 25 lakh.

At present, while the basic exemption limit remains at Rs 1.60 lakh a year, the limit for tax slabs are much lower — one pays 10 per cent tax on income ranging between Rs 1.60 lakh and Rs 3 lakh, 20 per cent between Rs 3 lakh and Rs 5 lakh and 30 per cent beyond Rs 5 lakh.

Thus, for an individual with taxable income of Rs 10 lakh a year tax payment will drop from Rs 1.68 lakh to Rs 51,000, a net annual saving of Rs 1.17 lakh. The exemption limit for women and senior citizens will continue to be Rs 1.90 lakh and Rs 2.40 lakh, respectively.

Not without pains

The Tax Code proposes to add all perquisites enjoyed by a tax payer to income for the purpose of tax calculations. In other words, allowances like leave travel, furnishings, entertainment expenses, conveyance, medical etc, will be added to income.

Similarly, the tax treatment for post-retirement benefits may prove to be a major dampener. Money saved in specified instruments like PPF and PF for getting tax exemption will become taxable when they are withdrawn later.

These investments, when accrued, were earlier exempted from tax. The Tax Code says that under the Exempt Exempt Tax (EET) system all withdrawals will attract tax because the amount withdrawn will be treated as part of the income for that year.

Wealth tax benefits

The proposed Tax Code has sought to make major changes in wealth tax calculations and rates.

The threshold limit for wealth tax will be raised to Rs 50 crore from the present Rs 30 lakh and the tax rate was reduced from 1 per cent to 0.25 per cent.

But, in a smart move, to expand the scope of taxation the Tax Code included financial assets like shares, corporate bonds, fixed deposits, etc in wealth tax. The valuation of these assets will be done at cost or at market price, whichever is lower. In case of capital gains tax too, the Tax Code proposed some sweeping changes. It has done away with the present system of short-term and long-term capital gain tax, and replaced it with a uniform structure and gains will be taxed at the marginal tax rate as applicable to the tax payer. The implications of these changes are clear: The period of holding has no bearing on the tax payable and bigger investors will be taxed at higher rates than the smaller ones.

A mixed bag

For the corporate world, the proposed reduction in the tax rate to 25 per cent from the existing 30 per cent is certainly good news and will help lowering the tax burden of India Inc in a big way. But at the same time the Tax Code proposes to do away with many exemptions that help lowering the tax. In a significant policy change, the Tax Code plans to discontinue all profit linked incentives for area-based investments like setting up plants in a backward area or in the north-east with investment-linked incentives in specific sectors like infrastructure, power, exploration and oil production etc.

Moreover, under the new proposal, tax holiday will not be for a specific period, as is the case now, but will be equal to all capital and revenue expenditure barring land, goodwill and debts.

Once a firm recovers the permitted investments and profits will be taxed. This change is aimed at incentivizing capital formation in critical areas and remove incentives to shift profits from the taxable unit to the exempted unit.

On the MAT

The Tax Code has an also proposed change in the calculation of minimum alternate tax (MAT) payable by a corporate. MAT will now be levied at 2 per cent of the value of gross assets of a firm in case of all companies except for banks which will pay tax at 0.25 per cent. This shift in MAT from book profits to gross assets is aimed at encouraging optimal utilization and increased efficiency of assets.

This proposal seems to run counter to the objective of encouraging of capital investments for productive growth. The changes in MAT rule will cause hardship to loss making companies as they will have to pay tax on assets.

Carrot and stick

If the Tax Code is generous in giving relief to tax payers, be sure, it will also make life miserable for those who evade tax through fraudulent means. As the Tax Code prescribes stiff penalties and prosecution for non-compliance with the tax laws, it proposes that every tax offense under the Code will be punishable by both imprisonment and fine.

Apart from defaulters, the Tax Code proposes to punish tax consultants who help in tax evasion. It gives sweeping powers and blanket protection to Income Tax officials for initiating court proceedings on matters relating to tax offences.

Indirect Taxation

The indirect tax in India constitutes a group of tax laws and regulations. The indirect taxes in India are enforced upon different activities including manufacturing, trading and imports. Indirect taxes influence all the business lines in India. Charge levied by the State on consumption, expenditure, privilege, or right but not on income or property. The indirect tax system in India has undergone extensive reforms for more than two decades. One of the most important reasons for recent tax reforms in many developing and transitional economies has been to evolve a tax system to meet the requirements of international competition.

The Indirect Taxation regime encompasses various types of taxes like Sales Tax, Service Tax, Custom and Excise Duties, VAT and Anti-Dumping Duties, and the organizations provide services in all these related fields.

Customs Duty

- Customs duty is levied by the Central Government on the import of goods into, and export from India.
- The rate of customs duty applicable to a product to be imported/ exported depends upon on its classification under the Customs Tariff Act.
- The Customs Tariff is aligned with the internationally recognized Harmonized Commodity Description and Coding System of Tariff Nomenclature (HSN) provided by the World Customs Organization.



- Custom duty Rates:
 - The peak rate of Basic Customer Duty (BCD) is currently set at 10% for all goods.

- Agricultural and other specified products are not included in above.
- The Indian central government has the power to exempt goods of any specified description from the whole or any part of custom duties.
- In addition, preferential/concessional rates of duty are available under the various bilateral and multilateral trade agreements entered into by India with other parties.

➤ Valuation of the goods for purpose of customs:

- Customs duty is levied on the transaction value of the imported or exported goods.
- Under Section 14 of the Customs Act 1962, the concept of transaction value is the sole basis of valuation for purposes of import and export.
- The general principles adopted for valuation of the goods in India are in conformity with the World Trade Organization agreement on customs valuation.
- However, the central government has established independent Customs Valuation Rules applicable to the export and import of goods.

➤ Types of customs duties applicable are as follows:

- BCD is the **basic component** of customs duty levied at the effective rate notified under the First Schedule to the Customs Tarrif Act, 1985 (CTA) and applied to the **landed value** of the goods (i.e. the Cost CIF value of the goods plus landing charges at 1%);
- The Countervailing Duty (CVD) is equivalent to, and is **charged in lieu of, the excise duty** applicable (excise duty is 10% plus education cess of 3%) on like goods manufactured in India. CVD is calculated on the **landed value of the goods and the applicable BCD**. However, the CVD on specific consumer goods intended for retail sale is calculated on the basis of the maximum retail price (MRP) printed on their packs.

- Education Cess at 3% is also levied on the aggregate customs duties (except safeguard duty, countervailing duty and anti-dumping duty). The Central Government has the power to except a particular category of goods from the cess.
 - Addition Duty of Customs (ADC) at 4% is charged in addition to the above duties on all imports subject to a few exceptions.
- The duty incidence arising on account of all other components may be set off/refunded subject to prescribed conditions.
- Where goods are imported for the purposes of manufacture, the Indian manufacturer may take a credit of the CVD and ADC paid at the time of import for setting off against the output excise duty. In the case of service providers, CVD credit is available.
- Similarly, the central government allows a refund of the mechanism in relation to the ADC paid on goods imported for the purpose of trading in India, subject to fulfillment of the conditions prescribed under the governing notifications and circulars issued in this regard.

Excise Duty

- It is a tax levied by the central government on the manufacture or production of movable and marketable goods in India.
- The rate at which excise duty is leviable on the goods depends on the classification of the goods under the Excise Tariff. The Excise Tariff is primarily based on the eight digit HSN classification adopted so as to achieve conformity with the Customs Tariff.
- Valuation of excisable goods:
- The excise duty on most consumer goods which are intended for retail sale is chargeable on the basis of the MRP printed on the goods packaging.
 - However, abatements are admissible at rates ranging from 20% to 50% of the MRP for the purposes of charging Basic Excise Duty (BED).
 - Goods other than those covered by a MRP based assessment are generally chargeable to duty on the “transaction value” of the goods sold to an independent buyer.

- In addition, the central government has the power to fix tariff values for charging ad valorem duties on the goods.
- Excise Duty Rates:
 - The main slabs of duty rates for BED are Nil, 4% and 10%.
 - In addition, some goods, such as specified motor vehicles, attract higher CENVAT rates of 22%.
 - EC at 2% and SHEC at 1% are applicable on the aggregate excise duties.



- The central excise duty is a modified form of Value Added Tax (VAT) where a manufacturer is allowed credit on the excise duty paid on locally sourced goods and the CVD and ADC paid on imported goods. The CENVAT credit can be utilized for payment of excise duty on the clearance of dutiable final products manufactured in India.
- Manufacturers of dutiable final products are also eligible to avail CENVAT credit of the service taxes paid on input services used in or in relation to the manufacture of final products and clearances of final products up to the place of removal.

- In addition, CENVAT credit is admissible on the following input services:
 - Services used in relation to setting up, modernization, renovation or repairs of a factory, a premises of a service provider or an office relating to such a factory or premises
 - Advertisement or sales promotion services;
 - Services in relation to procurement of inputs;
 - Activities relating to business such as accounting, auditing, financing, recruitment and quality control, coaching and training, etc
- A manufacturer of dutiable and exempt goods, using common inputs or input services and opting not to maintain separate accounts, may choose between the following options:
 - Reverse the credit attributable to the inputs and input services used for manufacture of the exempted goods, to be worked out in a manner prescribed in the rules; or
 - Pay a percentage of the value of the exempted goods.
- New amendments which were introduced vide Finance bill, 2013 are as follows:
 - Specific excise duty on cigarettes increased by about 18%
 - Excise duty on SUVs increased from 27% to 30%.
 - Proposal to levy 4% excise duty on silver manufactured from smelting zinc or lead.
 - Duty on mobile phones priced at more than Rs. 2,000 raised to 6%.

Service Tax

- Service tax is levied on all services (precisely 119 specific categories of services) identified under Chapter V of the Finance Act, 1994 (the Act) except those services specified in the negative list.
- The existing rate of service tax is 12%. In addition, EC of 2% and SHEC of 1% of the service tax is levied on taxable services. Thus the effective rate of service tax is 12.36%.
- The service is provided or agreed to be provided in “the taxable territory by one person to another and collected in such manner as may be prescribed”
- “Taxable territory” means the territory to which provisions of Chapter V of Finance Act, 1994 apply i.e. whole of India excluding the State of Jammu & Kashmir
- The “Negative List” as mentioned u/s 66D of the Finance Act, 1994 comprises of seventeen services, that is, service tax will not be levied on the services mentioned in this list. The same are mentioned hereunder:
- The onus of payment of service tax lies on the provider of the services. However, for specified services, such as transport of goods by road and sponsorship services, the service tax liability rests with the recipient of the services.
- Taxable services provided by service providers located outside India to a recipient in India are subject to service tax in terms of the Services (Provided from Outside India and Received in India) Rules, 2006. Under these rules, where the taxable services are provided from outside India and received in India, the service recipient is required to register and pay the tax in accordance with the relevant provisions of law.
- The current threshold limit for service tax exemption for small service providers is INR 10 lakhs. The threshold limit for obtaining service tax registration is INR 9 lakhs. All persons liable to pay service tax on eligible taxable services received or provided by them are required to obtain service tax registration from the jurisdictional Service Tax Commissioner. In this connection, the Service Tax Rules, 2004 provide that service recipients liable to pay service tax who receive services in more than one premises or office, and who have a centralized billing or accounting system, can opt for centralized registration by making an application to the Commissioner of Central Excise within whose jurisdiction the premises or office from where the centralized billing or accounting is located.

The Central Government has introduced the Service Tax (Determination of Value) Rules, 2006. The main features of these rules are detailed below:

- Where the consideration received for taxable service is not wholly or partly in money, the value of the taxable service would be equal to the gross amount charged by the service provider for a similar service as the sole consideration to any other person;
- Where such a value of a similar service is not available, the value of the taxable service shall be determined by the service provider and shall not be less than the cost of provision of such services;
- Any expenditure or costs incurred in providing taxable services shall be included in the value of such services;
- Only such expenditure as is incurred as a pure agent of the service receiver shall be excluded from the value of taxable services;
- In the case of services imported into India, the value of taxable services will be equal to the actual consideration charged;
- The Central Excise Officer has powers to question the valuation of such services and to re-determine the value after giving the assessee reasonable opportunities to be heard.

Value Added Tax (VAT)

- State level sales tax was replaced by VAT with effect from 1 April 2005 in the majority of Indian states.
- Under the VAT regime, the VAT paid on goods purchased from within the state is eligible for VAT credit. The input VAT credit can be utilised against the VAT/Central Sales Tax payable on the sale of goods. This ensures that the cascading effect of taxes is avoided and that only the value addition is taxed.
- Currently, there is no VAT on imports into India. Exports are zero rated. This means that while exports are not charged to VAT, VAT charged on inputs purchased and used in the manufacture of export goods or goods purchased for exports is available to the purchaser as a refund.
- State VAT is charged at varying rates of 1%, 4%, 5% and 20%. Goods other than those notified to be covered under the above rates are charged at a general rate ranging from 12.5% to 15%. Some of the states have varied these tax rates.
- Turnover thresholds have been prescribed so as to keep small traders out of the ambit of the VAT.
- A tax under a composition scheme, at a lower rate, may be levied on such small traders in lieu of the VAT.
- The following conditions also apply to VAT:
 - VAT registered dealers need to issue serially numbered invoices with prescribed particulars;
 - The periodicity of filing of VAT returns, in most states, is the same as that prescribed in the previous sales tax regime
 - A comprehensive self-assessment of VAT has been introduced;
 - Turnover taxes, surcharges, additional surcharges and the special additional tax have been abolished, excepting certain states such as Gujarat and Kerala;
 - Entry taxes continue, but have been made VATable, except where they are in lieu of Octroi.

Sales Tax

- The sale of movable goods in India is chargeable to tax at the central or state level. The Indian regulatory framework has granted power to state legislatures to levy tax on goods sold within that state. Such sales are, therefore, chargeable to VAT at the rates notified under the VAT laws of the relevant state.
- All goods sold in the course of interstate trade are subject to Central Sales Tax (CST).
- Where goods are bought and sold by registered dealers for trading or for use as inputs in the manufacture of other goods or specified activities (such as mining or telecommunications networks), the rate of sales tax is 2%, provided Form C is issued by the purchasing dealer. In the absence of that Form C, the applicable rate would be the rate of VAT on such goods in the originating state.
- CST is sought to be phased out before introduction of Goods and Services Tax (GST) in India
- Inter-state procurement on which CST is charged in the originating state is not eligible for input tax credit in the destination state.

Octroi / Entry Tax

- “Entry Tax” is a tax on entry of goods into the state from outside the state for use, consumption or sale therein. Entry tax continues to exist under the VAT regime, though in certain states it has been made VATable and can be set off against the output VAT liability in the state.
- Entry tax is leviable on purchase value, which is defined to mean the amount of the valuable consideration paid or payable by a person for the purchase of any goods. The value of the specified goods can be ascertained from the original invoice for purchase of such goods.
- Octroi is a municipal levy which is levied at the time of entry of specified goods into the limits of the relevant municipal corporation. Thus, Octroi can be leviable, if there is movement of goods from one city to another in the same state, in the event the cities fall under the jurisdiction of two different municipal corporations.

Goods & Service Tax (GST)

- One of the biggest taxation reforms in India -- the Goods and Service Tax (GST) -- is all set to integrate State economies and boost overall growth.
- GST will create a single, unified Indian market to make the economy stronger.
- Goods and Services Tax -- GST -- is a comprehensive tax levy on manufacture, sale and consumption of goods and services at a national level. Almost 140 countries have already implemented the GST. Most of the countries have a unified GST system. Brazil and Canada follow a dual system where GST is levied by both the Union and the State governments. France was the first country to introduce GST system in 1954.
- Through a tax credit mechanism, this tax is collected on value-added goods and services at each stage of sale or purchase in the supply chain.
- The system allows the set-off of GST paid on the procurement of goods and services against the GST which is payable on the supply of goods or services. However, the end consumer bears this tax as he is the last person in the supply chain.
- Experts say that GST is likely to improve tax collections and boost India's economic development by breaking tax barriers between States and integrating India through a uniform tax rate.
- It will not be an additional tax. CGST will include central excise duty (Cenvat), service tax, and additional duties of customs at the central level; and value-added tax, central sales tax, entertainment tax, luxury tax, octroi, lottery taxes, electricity duty, state surcharges related to supply of goods and services and purchase tax at the State level.
- Under GST, the taxation burden will be divided equitably between manufacturing and services, through a lower tax rate by increasing the tax base and minimizing exemptions.
- It is expected to help build a transparent and corruption-free tax administration. GST will be levied only at the destination point, and not at various points (from manufacturing to retail outlets).

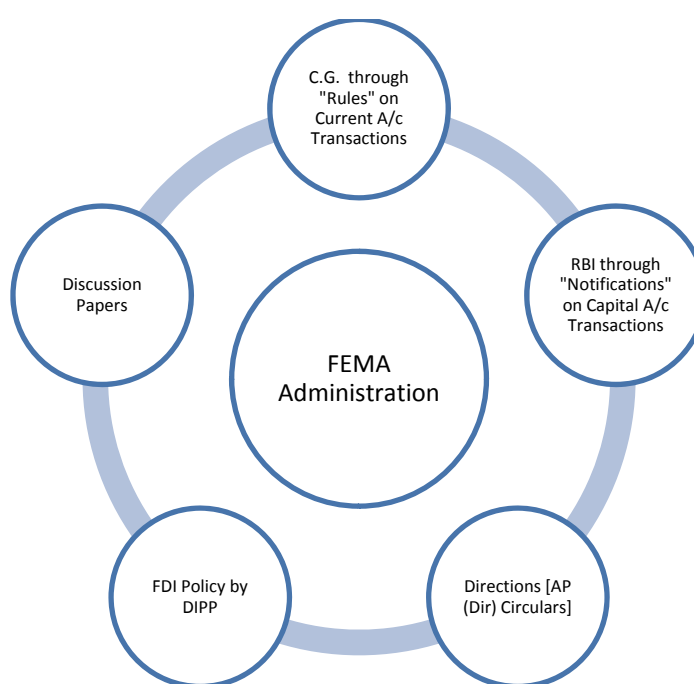
- It is estimated that India will gain \$15 billion a year by implementing the Goods and Services Tax as it would promote exports, raise employment and boost growth. It will divide the tax burden equitably between manufacturing and services.
- In the GST system, both Central and State taxes will be collected at the point of sale. Both components (the Central and State GST) will be charged on the manufacturing cost. This will benefit individuals as prices are likely to come down. Lower prices will lead to more consumption, thereby helping companies.
- India is planning to implement a dual GST system. Under dual GST, a Central Goods and Services Tax (CGST) and a State Goods and Services Tax (SGST) will be levied on the taxable value of a transaction.
- All goods and services, barring a few exceptions, will be brought into the GST base. There will be no distinction between goods and services. However, Alcohol, tobacco, petroleum products are likely to be out of the GST regime.
- The empowered committee is likely to finalize the details of GST but States have to sort out several issues like agreement on GST rates, constitutional amendments and holding talks with industry associations. Experts feel the drafting of legislation and the implementation of law will take time.
- The GST Bill, introduced in Parliament in 2010, is being fine tuned by the Finance Ministry after which states and the Centre would together finalize the draft and bring it back to Parliament. The Bill is likely to be taken up in the winter session of Parliament after it is fine-tuned by Finance Ministry following recommendations from the Standing Committee.



FEMA

Introduction

Exchange control in India is regulated under the Foreign Exchange Management Act, 1999 (FEMA). FEMA envisages that the RBI will have a key role in the management of foreign exchange.



➤ The scope of FEMA includes:

- Free transactions on current account subject to reasonable restrictions that may be imposed.
- RBI controls over capital account transactions.
- Control over realization of export proceeds.
- Dealing in foreign exchange through authorized persons like authorized dealer/money changer/off shore banking unit.
- Adjudication of Offences and Appeal Provisions

➤ Extraterritorial Jurisdiction:

FEMA extends to the whole of India. It also applies to the branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contraventions there under committed outside India by any person to whom the Act applies.

A person resident in India:

A person residing in India for more than 182 days during the preceding financial year but does not include

(A) A person who has gone out of India or who stays outside India, in either case-

- (a) for or on taking up employment outside India, or
- (b) for carrying on outside India a business or vocation outside India, or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) A person who has come to or stays in India, in either case, otherwise than-

- (a) for or on taking up employment in India, or
- (b) for carrying on in India a business or vocation in India, or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period

- Any person or body corporate registered or incorporated in India
- An office, branch or agency in India owned or controlled by a person resident outside India
- An office, branch or agency outside India owned or controlled by a person resident in India

➤ Restrictions on dealing in Foreign Exchange:

Section 3 of FEMA provides for a blanket restriction on dealing in foreign exchange by any person unless it is permitted

- Under the provisions of the Act
- Under the provisions of the Rules made under the Act
- Under the provisions of the Regulations framed under the Act
- By General or special permission of RBI

Section 3 under the FEMA	Nature of Restriction
Clause (a)	(a) To deal in foreign exchange or foreign security (b) To transfer any foreign exchange security to any person other than an authorized person.
Clause (b)	For making any payment to or to the credit of a person resident outside India in any manner.
Clause (c)	For receiving any payment from or on behalf of a person resident outside India except by way of an inward remittance, from a place outside India through an authorized person.
Clause (d)	To enter into any financial transaction in India as consideration for acquisition, creation or transfer of a right to acquire any asset outside India by any person.

Restrictions on Indian Resident

The Act provides for a blanket prohibition on a person resident in India to acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India except as permitted under the Act, Rules or Regulations made there under.

However the Act permits a person resident in India to hold, own, transfer or invest in foreign currency transfer or invest in foreign currency foreign security or any immovable foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person resident outside India.

➤ Foreign Exchange Transactions covered under FEMA:

Under the FEMA, foreign exchange transactions are divided into two broad categories:

- Current account transactions
- Capital account transactions.

What are Capital Account Transactions?

- (a) Transactions that alter the assets or liabilities outside India of a person resident in India
- (b) Transactions that alter the assets or liabilities in India, of a person resident outside India

Capital Account Transactions by Residents:	Capital Account Transactions by Non Residents:
Investment by a person resident in India in foreign securities	Investment in India by a person resident outside India
Foreign currency loans raised in India and abroad by a person resident in India	
Acquisition and Transfer of immovable property outside India by a person resident in India	Acquisition and Transfer of immovable property in India by a person resident outside India
Guarantees issued by a person resident in India in favor of a person resident outside India	Guarantees issued by a person
Export, import and holding of currency/currency notes	Export and import currency/currency notes into/from India by a person Resident outside India
Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India	
Maintenance of foreign currency accounts in India and outside India by a person resident in India	Maintenance of foreign currency accounts in India of a person resident outside India
Taking out the insurance policy by a person resident in India from an insurance company outside India	
Loans and overdrafts by a person resident in India to a person resident outside India	
Remittance outside India of capital assets of a person resident in India	Remittance in India of assets by a person resident outside India
Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India	

Note: Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 75,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. (This amount was initially USD 200,000 and has been reduced to USD 75,000 as per a circular of the RBI in September 2013)

A nonresident is prohibited from making an e investment in India in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage -

- In the business of chit fund, or
- As Nidhi Company, or
- In agricultural or plantation activities or
- In real estate business, or construction of farm houses or
- Trading in Transferable Development Rights (TDRs).

It is clarified that for the purpose of the Notification, “real estate business” shall not include the development of townships shall not include the development of townships construction of residential construction of residential or commercial premises, roads or bridges.

Current Account Transactions: A current account transaction is defined as a transaction other than a capital account transaction.

Prohibited Current Account Transactions (Sch I)	Transactions requiring the approval of the Government (Sch II)	Transactions requiring the approval of the RBI (Sch II)
Remittance out of lottery winnings	Remittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100 000	Holiday travel over USD 10,000 per person p.a.
Remittance of income from racing/riding etc. or any other hobby	Remittance of hiring charges of transponders by (a) TV Channels (b) Internet Service Providers	Gift over USD 5,000 or donation over USD 10,000 per remitter/donor p.a.;
Remittance for purchase of lottery tickets, banned/proscribed magazines, football pools, sweepstakes, etc.	Cultural Tours	Business travel over USD 25,000 per person per visit
Payment related to "Call Back Services" of telephones	Advertisement in foreign print media for the purposes other	Foreign studies as per the estimate of the institution or

	than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings.	USD 100,000 per academic year, whichever is higher
Remittance of interest income on funds held in Non Resident Special Rupee (Account) Scheme	Remittance of Freight of vessel chartered by a PSU	Consultancy services procured from abroad of over USD 1,000,000 per project (USD 10,000,000 in case of infrastructure projects)
Payment of commission on exports made towards equity investments in joint ventures/wholly owned subsidiaries abroad of Indian companies	Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Reimbursement of pre-incorporation expenses over the higher of USD 100,000 and 5% of investment brought into India.
Remittance of dividend by any company to which the requirement of dividend balancing is applicable	Remittances under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump-sum payment exceeds USD 2 million	Medical treatment outside India over USD 1,00,000 p.a.
Payment of commission of exports under Rupee State Credit Route	Remittance for membership of P&I Club	Exchange facilities exceeding USD 100,000 for persons going abroad for employment.
	Payment of import through ocean transport by a Government Department or a PSU on c.i.f. basis	Exchange facilities for emigration exceeding USD 100,000 or amount prescribed by country or emigration.
	Multi-modal transport operators making remittance to their agents abroad	Remittance for maintenance of close relatives abroad subject to the fulfillment of certain conditions
		Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.
		Remittance for purchase of trademark or franchise in India

Surrender of Foreign Exchange

Particulars	Item	Time Limit for surrender
Specific Receipts in foreign Exchange	a) Remuneration for services, (may be rendered in India) b) Settlement of any lawful obligation c) Income on assets held outside India (e.g. Interest, Dividend, Gains). d) Inheritance, Settlement or gift	Within seven days of its receipt.
Residual category	e) All other cases	Within 90 days of its receipt
Unspent Forex acquired for purpose other than travel	Foreign Exchange acquired for a particular purpose but which cannot be used or has partly remained unspent (Unspent forex can be used for other legitimate purpose within 60 days)	Within 60 days from the date of its acquisition or purchase
Unspent Forex acquired for travel	Currency notes and coins	Within 90 days from the date of return to India
(Retention permitted up to USD 2000 in the aggregate)	Travelers' Cheque	Within 180 days from the date of return to India.

Possession & Retention of foreign exchange

Category	Item	Limit
Authorized Dealer	Any foreign currency or coins	Up to the limit within scope of his authority
Any Person resident in India	a) Foreign coins b) Foreign currency notes, bank notes and travelers' cheque	a) No Limit b) Up to USD 2000 or its equivalent in the aggregate
Person Resident in India but not permanently resident	Foreign currency notes, bank notes and travelers cheques	No Limit provided such currency was acquired, held or owned by him while he was non-resident and legitimately brought to India



INDIAN ACCOUNTING STANDARDS & IFRS

Introduction

Globalization and break down of cross border barriers have encouraged the need to move towards a single set of consistent and understandable financial information reporting standards. The International Accounting Standard Board (IASB) has developed uniform global financial reporting standards which are termed as the ‘International Financial Reporting Standards (IFRS)’.

The convergence of banking and insurance, decreasing international acceptance of historical cost as a sound conceptual accounting principle, and the realization that solvency focused reporting for insurers does not provide an accurate picture of financial performance are other factors contributing to this development.

In order to keep pace with international development, the Government of India have committed that India would comply with the IFRS provisions by 2011. As a part of the commitment, the Insurance Regulatory and Development Authority appointed a committee to prepare the road map for insurance industry to move towards compliance with IFRS. It is important to note here that the move towards implementation of IFRS will give enough opportunity for us to meet a lot of disclosure which could help both the current and prospective policyholders and investors to make timely decisions.

Major findings of the committee are as follows:

1. Various provisions of IFRS are examined and differences which are significant are separated out from those having insignificant differences relative to the current Indian GAAP. The following items are identified with significant differences:
 - Disclosure of change in accounting policy and accounting of errors.
 - Presentation of financial statements with regard to ‘Going Concern’, ‘Sources of estimation uncertainty’ and ‘Comprehensive Income’ issues in particular.
 - Investment property measurement principle.
 - Classification of financial assets.
 - General reporting of assets at fair value.
2. Entity should take utmost care in preparing the first financial statements under IFRS. No voluntary changes in presentation and classification in a subsequent period shall be allowed unless operation of the entity changes significantly.

3. With regard to 'Measurement after Initial Recognition', infrequent revaluation will not be permitted. Choice has to be made at the time of accounting policy formulation whether to apply the cost model or the revaluation model for subsequent measurement of a particular class of asset.

Comparative Analysis of Accounting Standards & IFRS / Ind AS (IAS)

STD. No.	PARTICULARS	ACCOUNTING STANDARD	IFRS/IAS
AS 1 & IAS 1 with respect to 'Disclosure of Accounting Policies'	Components of financial statements	B/S, P&L, CONSOLIDATED FINANCIAL STATEMENTS & notes to accounts	B/S, Income Statement, Statement of changes in equity, CONSOLIDATED FINANCIAL STATEMENTS & notes to accounts
	B/S presentation	Part I of Schedule VI of the Companies Act, 1956	The B/S should distinguish between current & non-current assets and current & non-current liabilities
	P&L/Income Statement presentation	Schedule VI requires analysis of expenses by nature	An analysis of expenses is presented using a classification based on either the nature of expenses or their function whichever provides info, that is reliable & more relevant
AS 2 & IAS.2 with respect to 'Valuation of Inventories'	Deferred settlement terms with regard to inventory valuation	Not explicitly dealt with in the AS	Difference between the two prices i.e. purchase price of inventories for normal credit terms and the amount paid for deferred settlement terms to be treated as financing cost
AS 3 & IAS 7 with respect to 'Cash Flow Statement'	Bank Overdrafts	Considered as financing activity	Included in cash & cash equivalents if they form an integral part of the entity's cash management
	Interest and dividend paid	Interest allowed under financing activity and dividend paid under investing activity.	Allowed as operating cash flows
AS 5 & IAS 8 with respect to 'Net Profit or Loss for	Changes in accounting policies	Can be changed only to comply with some law, AS or for better	Retrospective effect to be given by adjusting the opening balance of the affected component of equity

the period, Prior Period Items and Change in Accounting Policies'		preparation & presentation of financial statements. Change generally adopted prospectively giving retrospective effect	
	Prior period errors/items	Prior Period Items are included in determining Profit & Loss for the period in which the error/omission is discovered & are separately disclosed on the face of the Profit & Loss so that their impact on the current year's Profit & Loss is clearly perceived	Material Prior Period Items are corrected retrospectively by restating the comparative amounts for prior periods presented in which the error/omission occurred or if it occurred before the earliest period presented, by restating the opening statement of financial position
AS 4 & IAS 10 with respect to 'Contingencies and Events Occurring after the Balance Sheet Date'	Proposed Dividend	Treated as an adjusting event	Liability for dividends declared to holders of equity instruments are recognized in the period when declared
AS 7 & IAS 11 with respect to 'Construction Contracts'	Method prescribed for accounting of Construction Contracts	Project Completion Method	Project Completion Method
AS 22 & IAS 12 with respect to 'Accounting for Taxes on Income'	Deferred income taxes	Deferred taxes are computed for timing differences in respect of recognition of items of profit and loss for the purpose of financial reporting and for income taxes	Deferred taxes are computed for timing differences between the carrying amount of an asset or liability in the statement of financial position and its tax base.
	Recognition of DTA	DTA from carry forward business loss & unabsorbed depreciation is recognized only to the	DTA from carry forward business loss & unabsorbed depreciation is recognized to the extent it is probable that sufficient future taxable income will be available

		extent there is virtual certainty supported with convincing evidence that sufficient future taxable income will be available against which such DTA can be realized. For all other reasons of DTA, reasonable certainty is sufficient for recognition	against which such DTA can be realized
	Classification	Shown separately on the face of the B/S, DTA under non – current assets after the head Investments & DTL under non – current liabilities after Unsecured Loans	Always classified as non-current, if current & non-current classification is presented
AS 6,10 & LAS 16 with respect to 'Depreciation Accounting and Accounting for Fixed Assets' (Exposure draft of revised AS 10(which is in line with IAS 16) approved by ICAI council, but no announcement thereafter}	Replacement costs	Generally expensed when incurred	Can be capitalized if it meets the recognition criteria & carrying amount of items replaced is derecognized
	Cost of major inspection	Generally expensed when incurred	Costs of major inspections & overhauls are capitalized in the carrying amount of property, plant & equipment
	Revaluation	No specific requirement on frequency of revaluation	If an entity adopts the revaluation model, revaluations are required to be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the end of the reporting period
	Depreciation	FAs are generally not componentized & depreciated separately except for certain types of FAs	Component based accounting for PPE & depreciation thereon
	Estimated residual value	Generally not updated	Needs to be reviewed at least at each year end
	Reassessment of	Not currently required	Requires annual reassessment of

	useful life		useful life
	Change in method of depreciation	Treated as a change in accounting policy & given retrospective effect	Treated as a change in accounting estimate & given prospective effect
AS 9 & IAS 18 with respect to 'Revenue Recognition'	Presentation of revenue/turnover	Shown gross & net of excise duty	Amounts collected on behalf of third parties such as sales & service taxes & VAT are excluded from revenues
	Measurement	At nominal amount of consideration receivable	Fair value of revenue from sale of goods & services when the inflow of cash & cash equivalents is deferred is determined by discounting all future receipts using an imputed rate of interest. The difference between the fair value & the nominal amount of consideration is recognized as interest income using the effective interest method
	Barter exchange transactions	No specific guidance	Fair value of services provided is measured with reference to non – barter similar transactions that occur frequently, represent a substantial amount of transactions, consideration involves cash or other securities that has a reliable measure of fair value and do not involve transaction with the same counterparty to the barter transaction
	Interest income	Recognized on a time proportion basis taking into account the amount outstanding & the late applicable. However, after AS 30 become applicable, it will be recognized using effective interest method(same as IFRS)	Recognized using effective interest method
	Revenue recognition from services	Completed Services Method or	Only Proportionate Completion Method

		Proportionate Completion Method	
AS 15 & IAS 19 with respect to 'Employee Benefits'	Recognition of actuarial gains and losses	Does not provide options and requires that the actuarial gain or loss should be recognized immediately in the profit & loss statement	IAS 19 provides options to recognize actuarial gains or losses as follows: <ul style="list-style-type: none"> • By following 'Corridor Approach' method which results in deferred recognition of the actuarial gains or losses or • Immediately in the profit and loss statement or • Immediately outside the profit and loss in a statement of changes in equity titled 'statement of recognized income or expense'
	Recognition of Deferred Benefit Assets	AS is more stringent	Because of the 'Corridor Approach' followed the recognition of assets under defined benefit plan may be more as compared to AS 15
	Termination Benefits – Recognition of liability	The termination benefits are recognized as a liability and as an expense only when: <ul style="list-style-type: none"> • The employer accepts the offer and • The amount can be reasonably estimated 	The termination benefits are recognized as a liability and as an expense only when, the enterprise is demonstrably committed to either: <ul style="list-style-type: none"> • terminate the employment of an employee or a group of employees before the normal retirement date or • provide termination benefits as a result of a offer made in order to encourage voluntary redundancy
AS 12 & IAS 20 with respect to '	Recognition	Capital approach or income approach,	Only income approach permitted. Government Grants are not

Government Grants'		depending upon the purpose of the Government Grants	directly credited to shareholders' interests
	Non-monetary Government Grants	Free - accounted at nominal value, Concessional - accounted at actual cost of the asset	Option to account for the asset & the grant at fair value or nominal value
	Classification incase of refund of grant	As an extra-ordinary item	Prohibited to be classified as an extraordinary item
	Repayment of grant relating to a FA	If repayment of Government Grant relating to an asset is recorded by increasing the carrying amount of the asset, then the cumulative additional depreciation that would have been recognized in absence of the grant is recognized over the remaining useful life of the asset on refund of the grant	If repayment of Government Grant relating to an asset is recorded by increasing the carrying amount of the asset, the cumulative additional depreciation that would have been recognized in absence of the grant is recognized immediately as an expense
AS 11 & IAS 21 with respect to 'Changes in Foreign Currency Rates'	Terminology	AS 11 makes use of only "Reporting Currency"	IAS 21 makes use of the terms "Functional Currency", "Presentation Currency" and "Recording Currency"
	Forward contracts/hedging	Covered by AS 11	Foreign currency derivatives which are not within the scope of IAS 39 (e.g. some derivatives which are embedded in other contacts) are within the scope of IAS 21. In addition, IAS 21 applies when an entity translates the amount relating to derivatives from its functional currency to its presentation currency.
AS14& IAS 22 with respect to 'Accounting for Amalgamation'	Pooling of interest method	Permitted	Prohibited
	Financial reporting in hyper-inflationary	No equivalent standard	Generally an economy is said to be hyper-inflationary when the

	economies - what is hyperinflation		cumulative inflation rate over 3 yrs. is 100% or more
AS 18 & IAS 24 with respect to 'Related Party Transactions'	Identification	Post employment benefit plans are not included as related parties	Related party includes post employment benefit plans for the benefit of employees of the reporting entity or any entity mat is related party of the reporting entity
AS 21 & IAS 27 with respect to 'Consolidated Financial statements'	Control	Control includes indirect control which may exist without majority holding	Control includes the power to govern the financial and operating policies of an enterprise so as to obtain benefits from activities
	Requirements	Consolidated financial statements are required in addition to and not in lieu of separate financial statements	Consolidated financial statements are required unless it is itself a wholly owned subsidiary.
	Goodwill	Goodwill or Capital Reserve is determined on historical cost basis; no prescription for amortization of goodwill	Goodwill or Capital Reserve is determined on the basis of assets or liabilities considered at their fair value; amortization is also provided
	Differential Period if the dates of parent and subsidiary do not coincide	Should not exceed 6 months	Should not exceed 3 months
	Other Statutory Requirements	Disclosure is required u/s 212 of Companies Act, 1956	No such requirements
	Investment in Subsidiary	It should be accounted for in accordance with AS 13 'Accounting for Investments'	It provides for guidance for accounting of investments in subsidiary in a parent's separate financial statements. It requires that a parent's investment in a subsidiary be accounted for in the parent's separate financial statements: at cost using the equity method as prescribed in IAS 28 or as available for sale of financial assets as described in IAS 39

	Exception of Consolidation	Should be excluded when it operates under severe long term restrictions which impair its ability to transfer funds to the parents	Specifically provides that consolidation is required till control is not lost for such subsidiary
AS 23 & IAS 28 with respect to 'Accounting for investments in Associates in Consolidated Financial Statements'	Goodwill identification	Goodwill or Capital Reserve should be separately identified	Does not require so
	Method of accounting	Equity method only if entity prepares Consolidated Financial Statements	Either equity method, at cost or available for sale in separate financial statements
	Impairment losses	Does not specifically state so	Should be recognized
AS 27 & IAS 31 with respect to 'Financial Reporting of interests in joint ventures'	Financial reporting of Interest in Joint Venture	Almost Same	Almost Same
AS 20 & IAS 33 with respect to 'Earnings Per Share'	Disclosure in separate financial statements	Disclosure of Basic & Diluted EPS required in separate as well as CONSOLIDATED FINANCIAL STATEMENTS of the parent	Disclosure of Basic & Diluted EPS required only in CONSOLIDATED FINANCIAL STATEMENTS
	Extra-ordinary items	EPS with & without extra-ordinary items is to be presented	No such requirement as no item can be , classified as extra-ordinary item
AS 25 & IAS 34 with respect to 'Interim Financial Reporting'	Interim financial reporting	Almost same	Almost same
AS 28 & IAS 36 with respect to 'Impairment of Assets'	Impairment of assets	Almost same	Almost same

AS 29 & IAS 37 with respect to 'Provisions, Contingent Liabilities and Contingent Assets'	Discounting	Discounting of liabilities is not permitted & provisions are carried at their full values	Where the effect of time value of money is material, the amount of provision is the PV the expenditure expected to be required to settle the obligation
	Contingent Assets	Are not disclosed in the financial statements. They are usually disclosed as part of the directors' report	Are disclosed in the financial statements where an inflow of economic benefits is probable
AS 26 & IAS 38 with respect to 'Accounting for Intangible Assets'	Measurement	Only at cost	Can be measured at cost or revalued amounts
	Useful Life	Generally assumed not to exceed 10 yrs., cannot be indefinite	May be finite or indefinite
	Goodwill	Arising on amalgamation in the nature of purchase is amortized over 5 yrs.	Not amortized but subject to annual or more frequent impairment test
AS 13 & IAS 32/IAS 39/ IAS 40 with respect to 'Accounting for Investments'	Scope of standards	All kinds of investments i.e. investments in subsidiary, associate and financial instruments are all covered under AS 13	There are 3 international standards covering investments i.e. IAS 32 and IAS 39 – investment in financial instruments IAS 40 – investment in property
AS 24 & IFRS 5 with respect to 'Discontinuing Operations'	Title of Standard	"Discontinuing Operations"	"Noncurrent assets held for sale and discontinuing operations"
	Disclosure of discontinuing operations	After the 'initial disclosure event'	After the classification of non – current asset as 'held for sale'
	Value of non – current assets	Valued at cost less depreciation less impairment loss	After they are classified as held for sale these will be carried at lower of carrying amount and fair value
	Disclosure of assets/ liabilities as held for sale	In notes to accounts	Presented separately on the face of the balance sheet
AS 30,31,32 & IAS 39,32 IFRS 7 with respect to 'Recognition, measurement, presentation & disclosure of financial			
	Recognition, measurement, treatment, presentation & disclosure of financial	Almost same	Almost same

treatment, presentation & disclosure of financial instruments'	instruments		
AS 17 & IFRS 8 with respect to 'Segment Reporting'	Applicability	It applies to listed enterprises as well as unlisted enterprises with an annual turnover exceeding Rs. 50 crores.	It applies to enterprises whose securities are publicly traded, including enterprises in the process of issuing equity or debt securities in a public securities market, but not to other economically significant entities
	Preparation of segment information	Should be prepared in conformity with accounting policies	Does not prescribe any policies
	Defining statements	'Risk – return' approach	More management approach



TRANSFER PRICING – SPECIFIC DOMESTIC TRANSACTIONS

Introduction

Finance Act, 2012 has cast wider and deeper net to cover domestic transactions between related parties. Therefore it could not be limited to large corporate houses but now many mid-sized groups would be covered.

Transfer pricing has been made applicable to domestic transactions and the much-awaited Advance Pricing Agreement (APA) has been introduced.

As quoted in the memorandum 1 to Finance bill 2012 “The Supreme Court in the case of CIT Vs. Glaxo SmithKline Asia (P) Ltd (2010)., in its order has, after examining the complications which arise in cases where fair market value is to be assigned to transactions between domestic related parties, suggested that Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to such related party domestic transactions.”

Taking a cue from above suggestion from honorable Supreme Court, Finance Bill 2012 has introduced TP regulation with regard to domestic transactions.

This will principally have impact in two ways. To begin with, the pricing of the domestic transactions will need to comply with the arm's length principle by application of one of the prescribed methods. In addition, there will be compliance and documentation obligations for such specified domestic transactions.

Scope

The following domestic transactions would be classified as “Specific Domestic Transaction” with the aggregate value exceeding INR 5 crores and shall be subject to TP regulation.

Specified Domestic Transactions		
Payments made to related parties	Transfer of goods from Tax Holiday Entities to Non - Tax Holiday Entities	Transfer from Tax Holiday Entities to others owing to close relation

Tax Holiday Entities

Location based Tax Holidays

- Undertakings having a unit in a Special Economic Zone
- Undertakings located in industrial backward district\
- Undertakings located in Himachal Pradesh, Uttaranchal, or notified areas in North Eastern States
- Undertakings engaged in business of hotel/ convention centre in specified areas/ districts

Section based tax Holidays

- Generation/ transmission or distribution of power or developing, operating, maintaining of infrastructure facilities, etc
- Company/companies engaged in refining oil, undertakings engaged in developing and building housing projects, etc

A specified domestic related party will include

- a director,
- a relative of the director,
- a person having substantial interest in the taxpayer (carrying not less than 20% of the voting power) and
- fellow related parties where a single person has substantial interest in two tax payers.

It would be applicable to transactions entered into w.e.f. 1st April, 2013 (i.e. for P.Y. 2012-13).

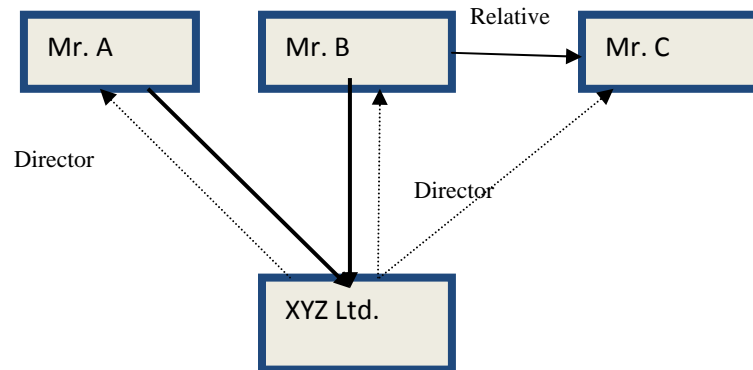
A few examples of domestic transactions are listed hereunder:

- Payment for purchase of semi – finished goods
- Transfer of machinery, technology, etc.
- Sharing of common costs
- Job work charges
- Payment of interest/ royalty charges
- Transfer of goods from one unit to another (in specific cases)
- Payment made to key personnel/ relatives
- Rent charged

Relationship issues & Challenges – Domestic Transfer Pricing (DTP)

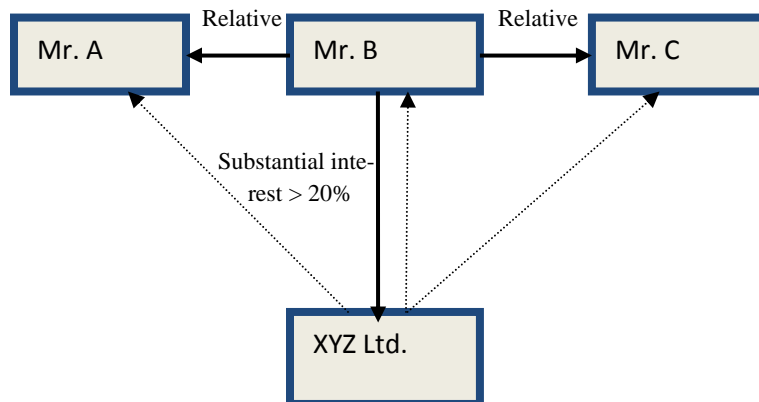
Case 1 – Director or any Relative of Director

Relative: in relation to individual, means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.



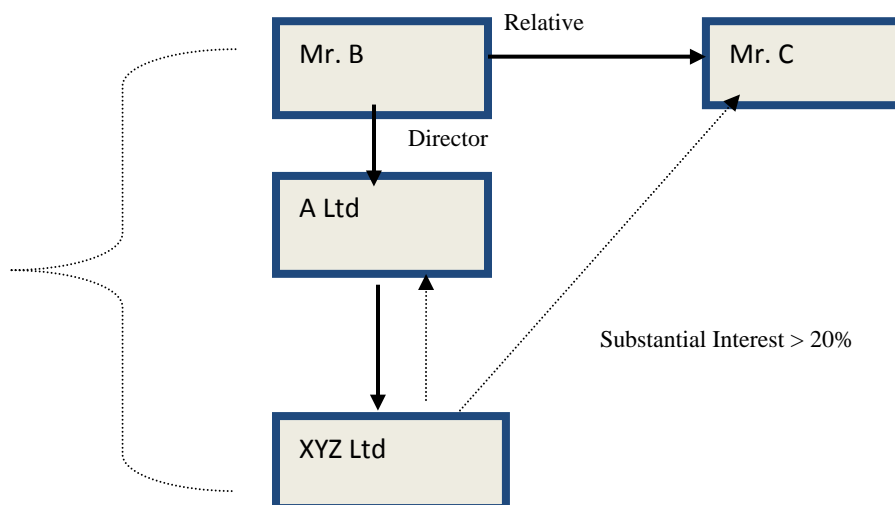
..... ➔ Covered under DTP

Case 2 – To an individual who has substantial interest in the business of XYZ Ltd or relative of such individual..



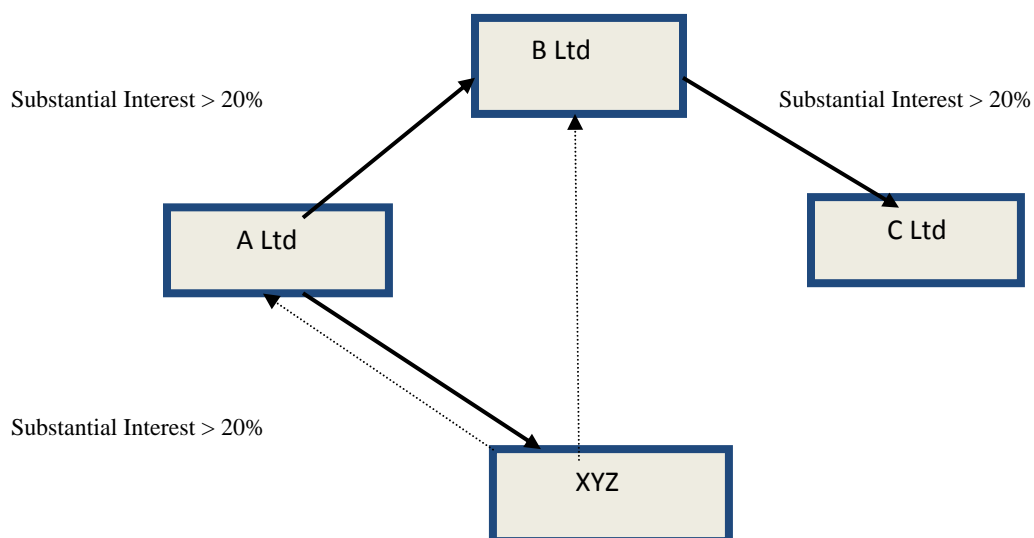
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Case 3 – To a Company having substantial interest in the business of XYZ Ltd or director of such company or any relative of director



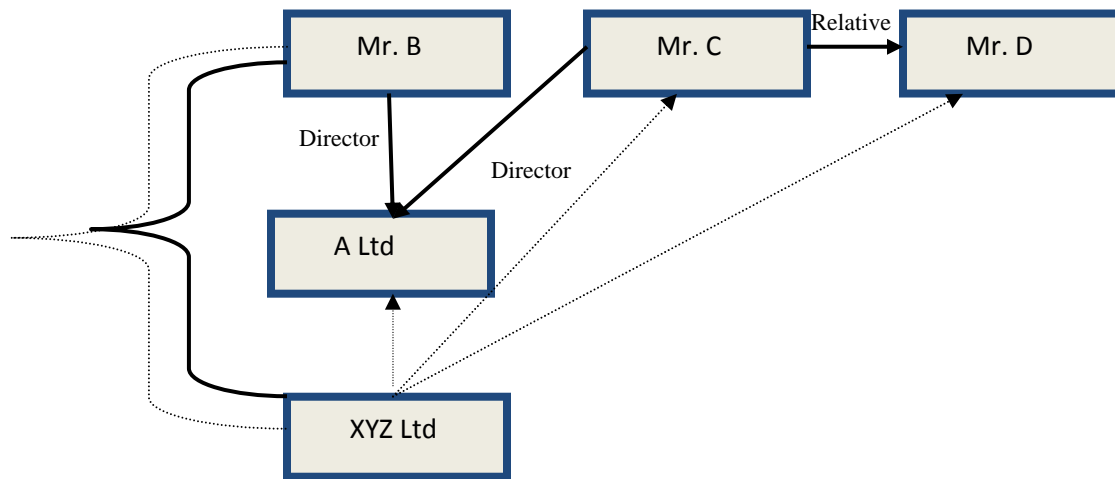
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Case 4 – Any other company carrying on business in which the first mentioned company has substantial interest



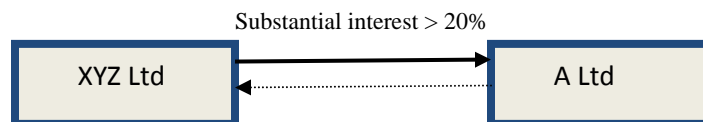
.....► Covered under DTP

Case 5 – To a company of which a director has a substantial interest in the business of XYZ Ltd or any other director of such company or relative of director.



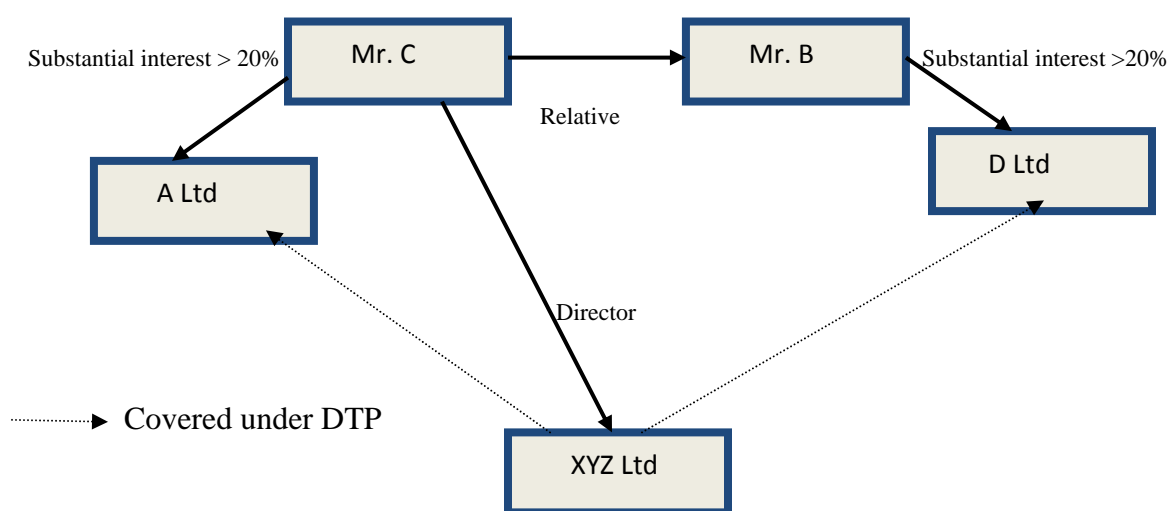
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Case 6 – To a company in which XYZ Ltd has substantial interest in the business of the company



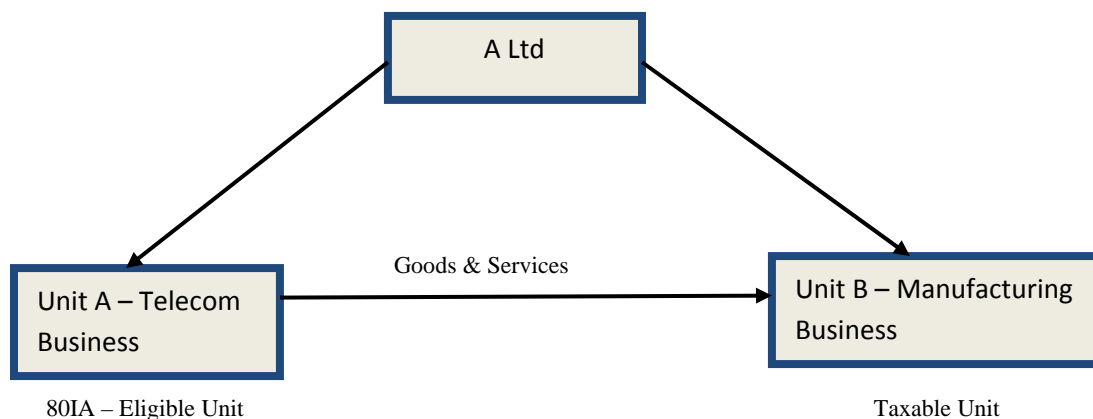
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Case 7 – Any director or relative of director of XYZ Ltd having substantial interest in that person



Basic Transactions

Case 1 -

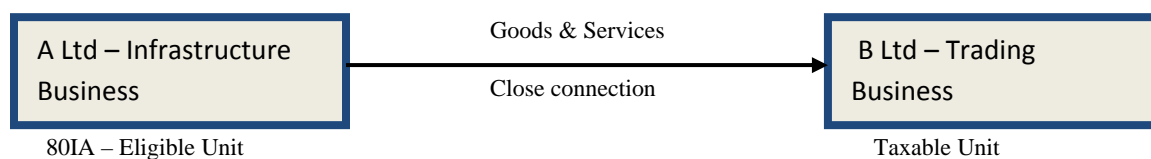


Transfer at Rs. 120

Market Value of above goods/services is Rs. 100

Thus, the Arm's length Price (ALP) of the above transaction is Rs. 100

Case 2 –



Operating Margin: 40% (Extraordinary Profits)

Industry Average: 10%

Thus, the Arm's length profit margin would be taken at 10%

Compliances

Every person who has entered into a specified domestic transaction during the previous year shall obtain a report from an accountant before **30th November** duly signed and certified by the accountant.

Form No.	Applicability	Details
7	List of related party with whom the assessee has entered into international transaction	<ul style="list-style-type: none"> • Name • Nature of relationship • Brief description
8	For Tangible property <ul style="list-style-type: none"> • Purchase/ sale of raw material/consumables or any other supplies for assembling/processing/manufacturing of goods /articles from/to related domestic transactions • Purchase/sale of traded/finished goods • Purchase/sale of other tangible movable/immovable property or lease of such property 	<u>Particulars in respect of transaction</u> <ul style="list-style-type: none"> • Name • Description & quantity purchased/sold • No. of units of each category of movable/immovable property involved(only for other tangible movable/immovable property) • Total amount paid/received or payable or receivable <ul style="list-style-type: none"> ○ As per books of accounts ○ As computed as per arms length price • Method of computation of ALP
9	For Intangible property such as know how/patents/copyrights/licenses/etc	<u>Particulars in respect of transaction</u> <ul style="list-style-type: none"> • Name • Description • Total amount paid/received or payable or receivable <ul style="list-style-type: none"> ○ As per books of accounts ○ As computed as per arms length price • Method of computation of ALP
10	In respect of services such as	<u>Particulars in respect of transaction</u>

	financial/administrative/technical/commercial services	<ul style="list-style-type: none"> • Name • Description • Total amount paid/received or payable or receivable <ul style="list-style-type: none"> ○ As per books of accounts ○ As computed as per arms length price • Method of computation of ALP
11	In respect of lending and borrowings in form of granting/receiving loans/advances to or from specified related parties	<u>Particulars in respect of transaction</u> <ul style="list-style-type: none"> • Name • Nature of financing agreements • Currency in which loan/advance received/granted • Interest rate charged/paid • Total amount paid/received or payable or receivable <ul style="list-style-type: none"> ○ As per books of accounts ○ As computed as per arms length price • Method of computation of ALP
12	Particulars in respect of mutual agreement or arrangement for allocation of apportionment of/ contribution of any cost or expense incurred or to be incurred in connection with a benefit/service	<u>Particulars in respect of transaction</u> <ul style="list-style-type: none"> • Name • Description • Total amount paid/received or payable or receivable <ul style="list-style-type: none"> ○ As per books of accounts ○ As computed as per arms length price • Method of computation of ALP
13	Any other transactions	<u>Particulars in respect of transaction</u> <ul style="list-style-type: none"> • Name • Description • Total amount paid/received or payable or receivable <ul style="list-style-type: none"> ○ As per books of accounts ○ As computed as per arms length price • Method of computation of ALP.



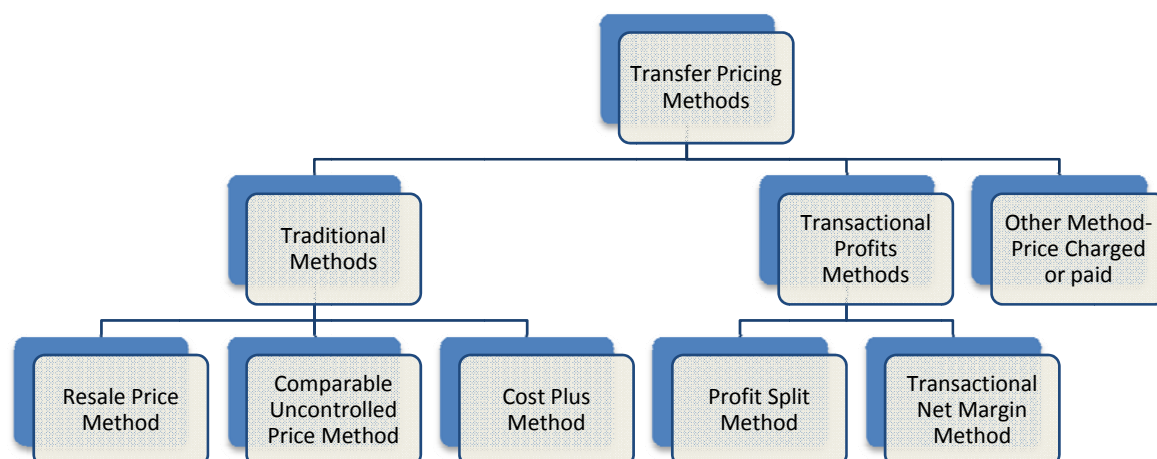
Transfer Pricing methods are **ways of calculating the profit margins** of transactions of an entire enterprise or of calculating a transfer price that qualifies as being at arm's length.

Some methods are more appropriate and indicative to provide for an arm's length result for certain transactions than others. For example, a **cost based method** is usually deemed more appropriate for determining an arm's length price for **services and manufacturing**, and a **resale price method** is usually more appropriate for determining an arm's length price for **distribution/selling functions**.

The starting point to select a method is the **functional analysis** which is necessary irrespective of the method selected.

Functional analysis helps:

- To identify and understand the **intra group transactions**
- To have a **basis for comparability**
- To determine any **necessary adjustments** to the comparables
- To check the **accuracy of the method** selected
- Over time, to consider **adaptation of the policy** if the functions, risks or assets have been modified.



A. Resale Price Method

Step 1: The **price** at which property purchased or services obtained by the enterprise from a specified domestic enterprise is resold or are provided to an unrelated enterprise, is identified

Step 2: Such resale price is **reduced** from the **Normal Gross Profit Margin** accruing to the Enterprise from the purchase and resale of similar goods in a **comparable uncontrolled transaction**. If there is no comparable uncontrolled transaction, then take the gross profit of an unrelated person from purchase and resale of similar goods.

Step 3: Then **reduce the expenses** incurred by the Enterprise in connection with the purchase of property.

Step 4: The price so arrived at is adjusted to take into **account the functional and other differences**, the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market

Step 5: The **adjusted price** arrived at in Step 4 is taken to be an arm's length price

B. Comparable Uncontrolled Price Method

Step 1: Determine the **price** charged or paid for the property transferred or services provided in a comparable uncontrolled transaction.

Step 2: Such price is **adjusted to account for differences**, if any, between the domestic transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market.

Step 3: The **adjusted price** arrived at in Step 2 is taken to be an arm's length price

C. Cost Plus Method (C+)

Step 1: Determine the **Direct and Indirect costs of Production** in respect of Property transferred or Services provided to a Specified Domestic Enterprise.

Step 2: Determine the **normal gross profit mark up** to such costs which will arise from the transfer of similar goods or services to an unrelated enterprise or in a comparable uncontrolled transaction.

Step 3: The normal gross profit mark up is **adjusted to account for functional differences**, if any, between the domestic transaction and the comparable uncontrolled transactions, which could materially affect the price in the open market.

Step 4: The cost referred to in Step 1 is **increased** by the adjusted profit mark up arrived.

Step 5: The **sum** so arrived is the arm's length price.

D. Profit Split Method (PSM)

This method is applied in **multiple** Specified Domestic Transactions which are so inter related that they cannot be evaluated separately.

Step 1: Compute the **net profit** of the Specified Domestic Enterprise arising in the transaction.

Step 2: Compute the **Relative Contribution** made by each of the Enterprises to the earnings of the combined net profit.

Step 3: **Split the Combined Net Profit** in proportion to their Contributions.

Step 4: The **sum** so arrived is the arm's length price.

E. Transactional Net Margin Method

Step 1: Compute the **Net Margin** realized by the Enterprise from the **Specified Domestic Transaction** entered into with the Specified Domestic Enterprise.

Step 2: Compute the **Net Margin** realized by the Enterprise or by an unrelated enterprise from a **comparable uncontrolled transaction**.

Step 3: **Adjust** the Net Profit Margin computed in Step 2 to account for differences.

Step 4: The Net Profit computed in Step 1 is established to be the same as the Net Profit Margin referred to in Step 3.

Step 5: The net profit margin thus established is then taken into account to arrive at an arm's length price in relation to Specified Domestic Transaction.

F. Other Method – Price Charged or Paid/ would have charged or Paid

The new method prescribed by the CBDT is **ambiguous** unlike the other five methods that have been in existence over the years of transfer pricing regime in India. There is **no specific guidance** provided by the CBDT for application of this method.

The Rule inter-alia provides for **use of a price** that would have been charged in a **parallel situation in an uncontrolled environment** for benchmarking. This indicates that the comparison of a controlled transaction **need not necessarily be with an existing transaction** entered in a third party scenario, but could be a **proposed third party transaction** as well. Accordingly, the Rule suggests that the taxpayer could determine the arm's length price of controlled transactions, taking into consideration **valuation reports, price quotes, rate cards or other such standard quotes which are not existing transactions**.

The sixth method introduced by the CBDT does not provide either clarity or guidance in terms of the manner of benchmarking a transaction under this method. Though it appears that the Rule would provide more flexibility to the taxpayer for determination of the arm's length price, it needs to be noted that this **flexibility will also be available to the Revenue authorities**, and could be used to undertake aggressive adjustments resulting in further litigation.

Penal Provisions

If the tax authorities are of the view that the transactions between domestic enterprises are not at arm's length, they may either disallow the expenses or deny tax benefits on the excessive profits of the undertaking.

Existing penalty provisions now
Also applicable to Specific
Domestic Transaction

2% of Transaction Value for:

- Non – maintenance of documents
- Non – submission of documents
- in case of adjustment 100% to 300% of additional tax

New Penalty provisions introduced
for Specific Domestic Transactions

2% of Transaction Value for:

- Non – reporting of transactions
- For incorrect maintenance/ submission of documents



INDIAN JUDICIAL SYSTEM

Introduction:

The Indian Judicial System is one of the oldest legal systems in the world today. It is part of the inheritance India received from the British after more than 200 years of their Colonial rule, and the same is obvious from the many similarities the Indian legal system shares with the English Legal System. The frame work of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it.

The Constitution of India is the supreme law of the country, the fountain source of law in India. It came into effect on 26 January 1950 and is the **world's longest written constitution**.

It not only laid the framework of Indian judicial system, but has also laid out the powers, duties, procedures and structure of the various branches of the Government at the Union and State levels. Moreover, it also has defined the fundamental rights & duties of the people and the directive principles which are the duties of the State.

Inspite of India adopting the features of a federal system of government, the Constitution has provided for the setting up of a single integrated system of courts to administer both Union and State laws.

- Supreme Court – Apex Court
- High Courts – State Level
- District Courts – District Level

Features of the Indian Judicial System

- **Common law system**

The law is developed by the judges through their decisions, orders, or judgments. These are also referred to as precedents. The Indian system incorporates the common law system along with the statutory law and the regulatory law.

- **Pattern of Adversarial System**

The courts based on the common law system tend to follow the adversarial system of conducting proceedings instead of the inquisitorial system. In an adversarial system, there are two sides in every case and each side presents its arguments to a neutral judge who would then give an order or a judgment based upon the merits of the case.

Indian judicial system has adopted features of other legal systems in such a way that they do not conflict with each other while benefitting the nation and the people. For example, the Supreme Court and the High Courts have the power of judicial review. This is a concept prevalent in the

American legal system. According to the concept of judicial review, the legislative and executive actions are subject to the scrutiny of the judiciary and the judiciary can invalidate such actions if they are ultra vires of the Constitutional provisions. In other words, the laws made by the legislative and the rules made by the executive need to be in conformity with the Constitution of India.

Jurisdiction & Powers of the Courts:

Supreme Court of India:

The features of the Supreme Court are as follows:

- Any law declared or order/judgment passed by it is binding on all the courts within the territory of India.
- The jurisdiction and powers of the Supreme Court (SC) are defined under Articles 131 to 142 of the Indian Constitution. The jurisdiction includes original, writ, and appellate jurisdiction.
- It can hear disputes between:
 - ✓ Government of India (GoI) and one or more States, or
 - ✓ GoI & any State or States on one side and one or more States on the other, or
 - ✓ Two or more States, if it involves a question - of law or fact - on which depends the existence or extent of a legal right.
- Writ jurisdiction
- Appellate Jurisdiction:

It has the power to hear appeals against any judgment, decree or final order (or sentence) of a High Court in a constitutional, civil or criminal case, where exists a substantial question of interpretation of

- ✓ the constitution, or
- ✓ a law of general importance

in case of a death sentence awarded in criminal matters.

- It has the power to hear matters which fell within the jurisdiction of the Federal Court under any law just before the commencement of the Indian Constitution.
- It has special advisory jurisdiction regarding matters referred to it by the President if India

- It has the power and authority to review any order or judgment passed by it as well as transfer cases from one High Court to another or from the District Court of one state to the District Court of another State.

However, an additional requirement is that the concerned High Court (HC) under Article 134A has to certify that the case in question is fit for an appeal to the SC.

High Courts of India

- The High Courts of India are the supreme judicial authority at the State level.
- There are currently 21 High Courts in the country
- Any law declared or orders/judgments passed by them are not binding on the other High Courts (HCs) of the country or the subordinate courts which fall under the purview of the other HCs unless the other High Courts choose to follow such law or order or judgment.
- Their territorial jurisdiction is varied.
- They have the power to issue writs for enforcement of the rights under Part III as well as “for any other purpose”.
- The High Court can hear , any civil or criminal case which does not fall within the purview or ambit of the subordinate courts of a State, due to lack of pecuniary or territorial jurisdiction, can be heard by the High Court of that State.
- The High Courts’ work primarily consists of appeals from the lower courts as well as the writ petitions filed before it under Article 226.

The Subordinate Courts:

- The District Courts are at the top of all the subordinate or lower courts. They are however under the administrative control of the High Court of the State to which the district court belongs to.
- The original jurisdiction of the District Courts in civil matters is confined by not just the territorial limitations, but by pecuniary limitations as well.
- The decisions of the District Courts are of course subject to the appellate jurisdiction of the High Courts.

Thus, the Indian Judicial System is a mix of the Courts and the Tribunals & Regulators, and all these entities working together as part of an integrated system for the benefit of the nation.



GROWTH PERSPECTIVE OF INDIA

A Land of Opportunities

As a rapidly emerging economy, India offers huge opportunities ranging from infrastructure, energy, education, to health. The R&D sector in India is well developed and their expertise established key technological partnerships. The Five Year Plan Goal of India on matters such as infrastructure, industry, skills and financial services offer important opportunities for British investors. The infrastructure plan seeks to help economic growth by having a solid infrastructure, a goal which UK companies can help India achieve through financing, training, and the their dynamic are suited for the rapidly growing Indian economy. Also, the financial services system is wanted to be improved, so the world leading and renowned UK financial services can play an important role in the shaping of this fundamental economic sector. A growing industry and economy requires important amount of energy, so to meet this demand, UK companies, with their market-leading expertise in traditional and renewable energy production can be a perfect choice.

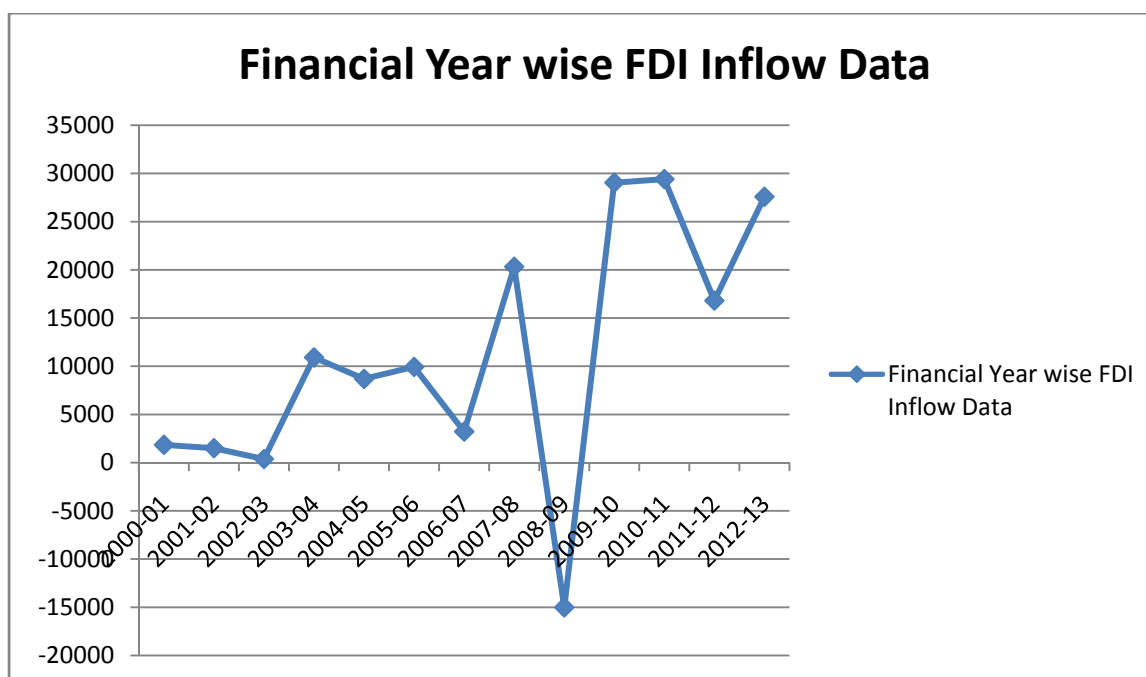
There is an important difference between potential and installed capacity of RES. In 2011, the potential capacity of wind-generated power was 45,000 MW out of which, 15700 were installed, small hydro potential was 15,000 MW out of which 3200 were installed and solar had a potential of 50 000 MW out of which only 480 MW were installed.

Renewable energy investment in India was the second fastest-growing among the G-20 countries in 2011, with an increase of 54% in investment. The Government allows 100% foreign direct investment – FDI – in the renewable energy sector and placed favorable policies to attract investors.

India presents an attractive market opportunity for renewable energy firms worldwide, and with the adequate guidelines and assistance on several strategic and operational aspects they will be in the position of effectively tapping this opportunity.

The phrase “economic opportunity” is frequently used in economic discussions, but within India it has always had a somewhat nebulous meaning. Largely thanks to market reforms and caste system erosion, India has begun transitioning from low-paid outsourcing fodder into a sophisticated service economy. The nation’s “world-class software developers are moving into high-margin consulting,” striving ambitiously to “take business from the likes of Accenture and IBM.” Outsourcing professionals have graduated from “filling orders for infomercial ab-crunchers to handling financial analysis for Wall Street firms.” And India’s drug makers, previously held in contempt by the developed world for patent piracy, “are being wooed by the same global giants whose medicines they were copycatting.” In short, India has become a place where talented, intelligent and hard-working people can get ahead.

The 2008 financial crisis hit the world bad and resulted in huge losses across the globe. Millions were withdrawn from India as well. However, India healed her wounds quick and by 2009, the FDI was way higher than it ever had as shown in the chart below:



Few countries have improved their economic prospects so dramatically as India has in the last 20 years. Indeed, one would be hard-pressed to read a long-term forecast that did not view India as a large and growing force in the world economy. With a population of over 1 billion, it might seem like it could hardly be any other way.

The story was once very different in India. A Brookings Institution report on January 13 states that India was, “essentially insulated” from world markets as recently as 1990. Not only did “ups and downs in the world economy matter little” to India, but perhaps worse, “movements in the Indian economy were even less consequential for the world economy,” as the proportion of world trade and investment India personally accounted for was negligible at best. Difficult as it may be to believe today, foreign direct investment in India stood at a paltry \$100 million in 1991. By 2006-2007, FDI had increased to \$19 billion. Moreover, Business Standard reports that India boasted a 9% per annum growth rate between 2004 and 2009. Despite being all but irrelevant to the world economy just two decades ago, India has clearly become a force to be reckoned with on the global stage.

India is one of the fastest growing economies in the world. Tons of opportunities lie here and with a fast growing industry base and favorable policies its indeed growing as a country to invest.

“The last decade has been tremendous for India and so will be the future. With over half the population under the age of thirty five, itself denotes the availability of loads of knowledge in the youth and how much the country can grow in the years to come. It is one of the fastest growing countries around the globe and with its flexibility and simplicity of foreign policies is becoming the next hub for foreign investors.” – **R. L. Kabra, Chairman Ecovis RKCA**

“India is the epicenter for SMEs. FDI has been increasing and is at its peak over the last three years. Going for global glory and a spectacular performance in various sectors, it is poised to be a highly favored nation for investment from abroad and is on her way to become one of the leading powers in the world in the near future.” – **Dheeraj Rathi, Director Ecovis RKCA**

“India is a rising, rising superpower. Twenty-two years ago, India took bold steps to start opening their economy. And the results were immediate, and remarkable. In the last 13 years, trade between India and the United States had increased five-fold to nearly \$100 billion.” – **Joseph Biden, Vice President, United States of America**

“Many of the country’s problems can be fixed by taking relatively easy steps. India does not need to become a manufacturing giant overnight to fix its current problems. India can do better, much better.” – **Raghuram Rajan, RBI Governor**

“India is a huge country on the move. There are many investing opportunities here” – **Warren Buffet, Billionaire Investor, Chairman and CEO of Berkshire Hathaway**

“I do not think is on a path to a down grade, though it is always hazardous to predict what a rating agency will do. Foreign Exchange Reserves are on multiple of what they were in 1991. India can manage 100% of its short term external debt. The long term growth prospects remain positive” – **Anshu Jain, Co-CEO Deutsche Bank.**