Business Consultancy, Legal Advisory & Compliances

DOING BUSINESS IN INDIA

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Foreword

Against the backdrop of a slowing world economy, uneven growth in various regions, inward looking policies being pursued by different countries, volatile oil prices and trade tensions, India stands tall among the fastest growing country with stable and proactive government, huge middle class and large consumer base, robust judicial system, favorable demographics and low labour costs. The government is working towards making it a $5 trillion economy by 2024.

The various proactive reforms and initiatives taken by the government over the last five years have moved the country onto the next growth orbit. International Business Community has shown great appreciation of the improving and enabling business environment in India. Foreign Investment flows have gone up and country has moved places in the World Bank 'Ease of Doing Business' rankings.

The Union Budget for 2019-2020 and subsequent policy reforms focus on investments and increasing demand. Further relaxations in FDI norms for single brand retail, coal mining, contract manufacturing and digital media have been announced. Infrastructure will continue to be a critical area with a planned investment of around $1.4 trillion in the next 5 years.

Major reforms in the corporate tax structure have made India very competitive and even better than other countries in the South East Asian region.

The government is proactively pursuing policies for faster, sustainable and inclusive growth.

This booklet presents a bird's eye view of the Indian economy, investment opportunities in different sectors, why invest in India and what could be the alternate ways of setting up business in India.

We hope you will find this useful.

Ved Jain

Contents

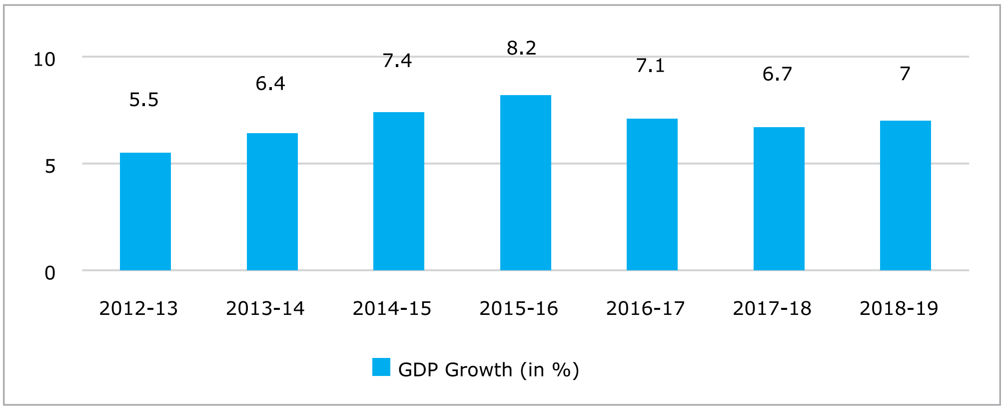
1. ECONOMY

The Indian Economy is projected to grow at a healthy rate of 6-7 percent in 2019. The growth is expected to gather pace in the years ahead with the Government in a mission mode to speed up economic reforms and create a better business environment for domestic and foreign companies.

The economy section presents various economic parameters highlighting sustained improvements over the last few years, and how it compares with other regions.

The shift from primary to secondary and tertiary sectors, the increasing flow of foreign investment into the country in diverse areas, healthy foreign exchange reserves and reasonably static price indices confirm strong base of the economy and become a major power house in the near future.

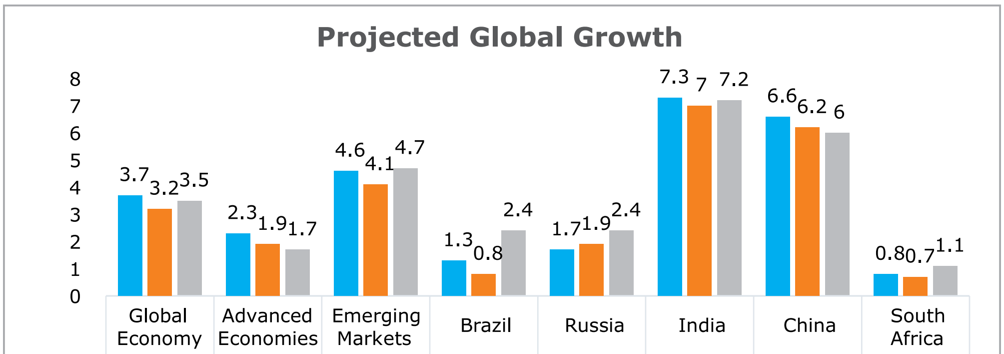
GROSS DOMESTIC



Source: RBI

Inspite of the global economic slowdown, India continues to grow at a healthy rate of around 7%.

WHERE INDIA STANDS ON GLOBAL PLATFORM

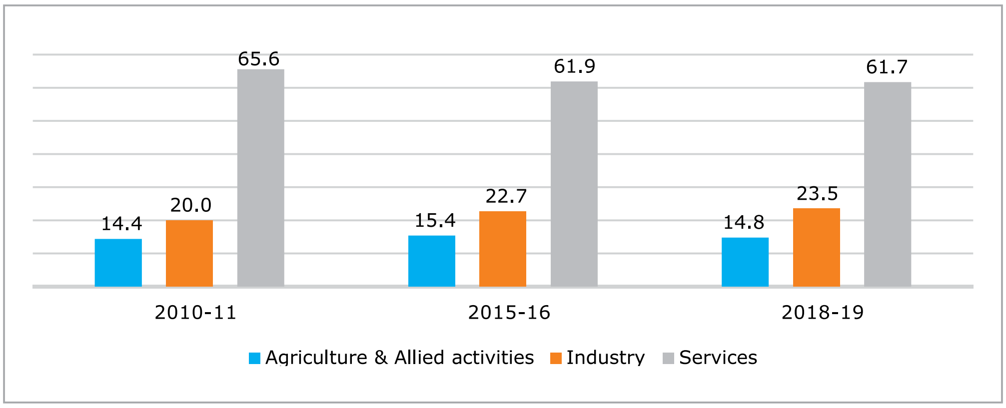


	Global Economy	Advanced Economies	Emerging Markets	Brazil	Russia	India	China	South Africa
2018	3.7	2.3	4.6	1.3	1.7	7.3	6.6	0.8
2019	3.2	1.9	4.1	0.8	1.9	7	6.2	0.7
2020	3.5	1.7	4.7	2.4	2.4	7.2	6	1.1

Source: IMF

While growth forecast for advanced economies is around 1.7% and 4.7% for emerging markets, India is projected to grow around 7-8% in 2020.

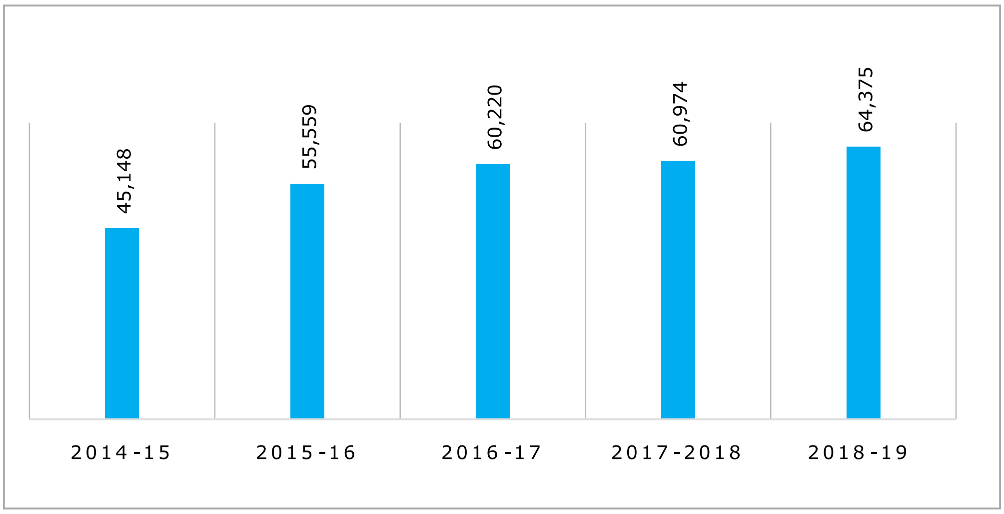
COMPOSITION OF GDP



**Source: RBI*

As the economy grows, there is an evident shift from primary to secondary and tertiary sectors with manufacturing slated to increase its share in GDP to 25% in the next few years.

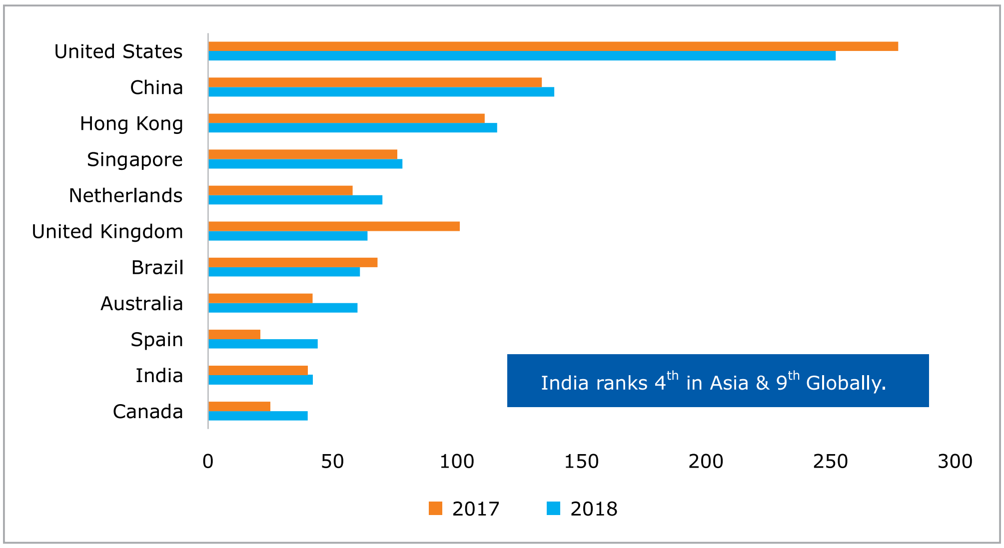
FOREIGN DIRECT INVESTMENT



**Source: DPIIT*
(US$ Million)

FDI has increased over the past few years in India, attracting over 77% of the total foreign direct investment flows to the South Asian region.

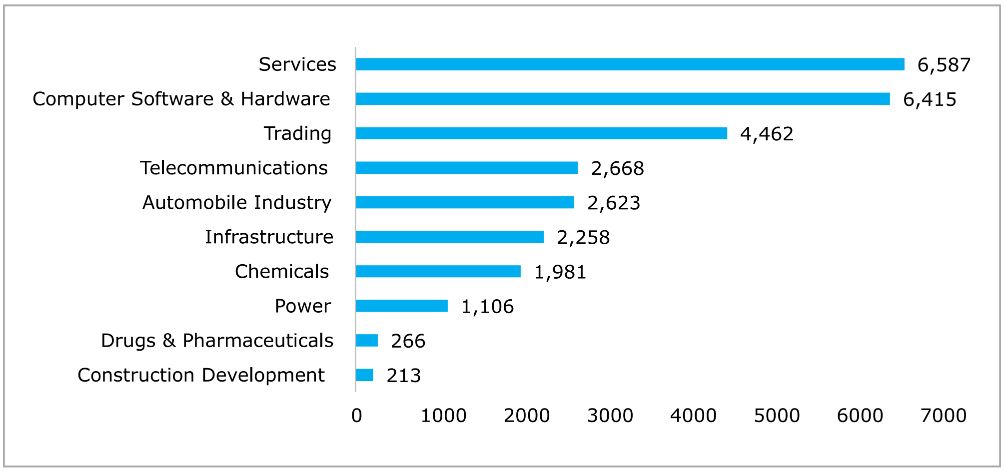
FDI INFLOWS - TOP 10 HOST ECONOMIES



**Source: World Investment Report 2019*
(US $ billion)

India is among the top 10 host economies for FDI, according to the United Nations Conference on Trade and Development (UNCTAD) 2019 World Investment Report.

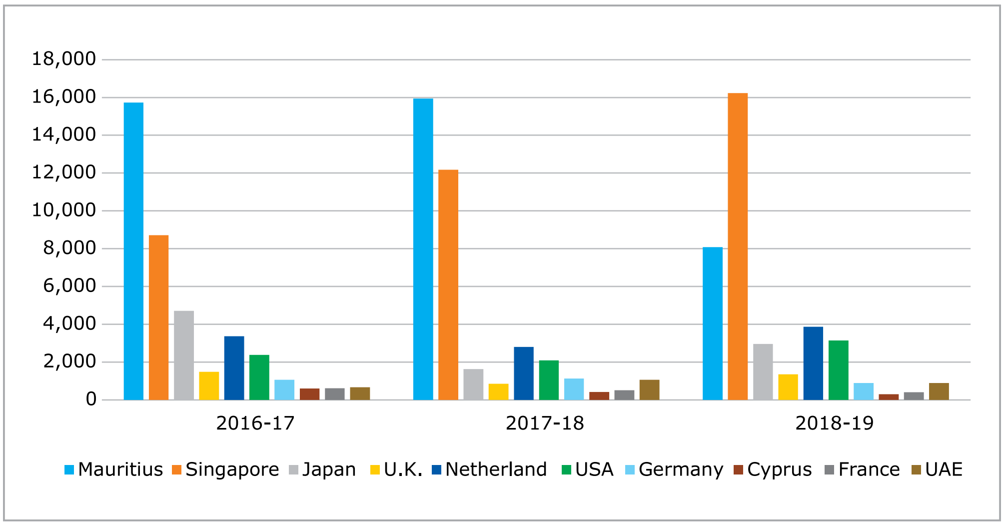
FDI INFLOWS IN THRUST SECTORS



**Source: DPIIT*
US$ million 2018-19

With its abundant technical and skilled manpower, India is attracting higher investments in the services sector.

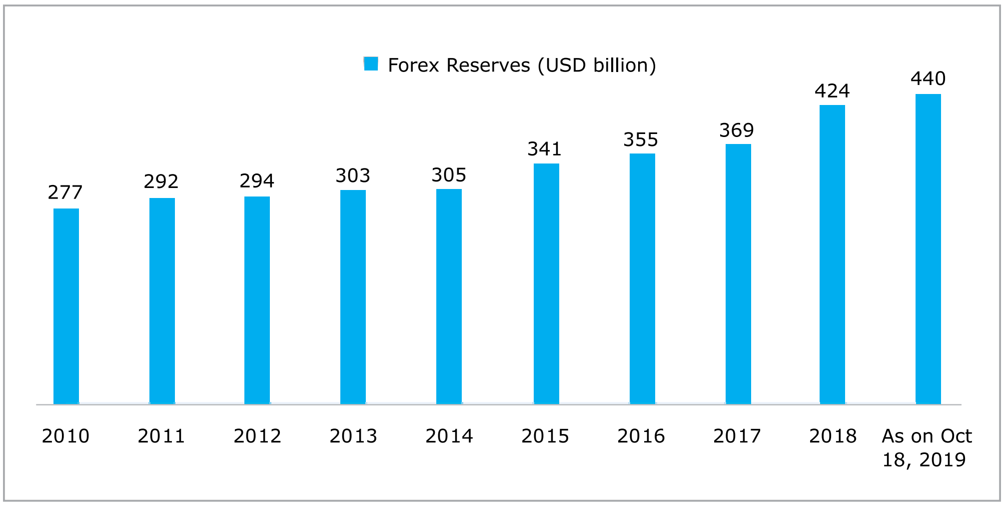
FDI INFLOWS FROM MAJOR COUNTRIES



**Source: DPIIT*
(US$ million)

Singapore has lately replaced Mauritius as the major investment route for foreign companies investing in India.

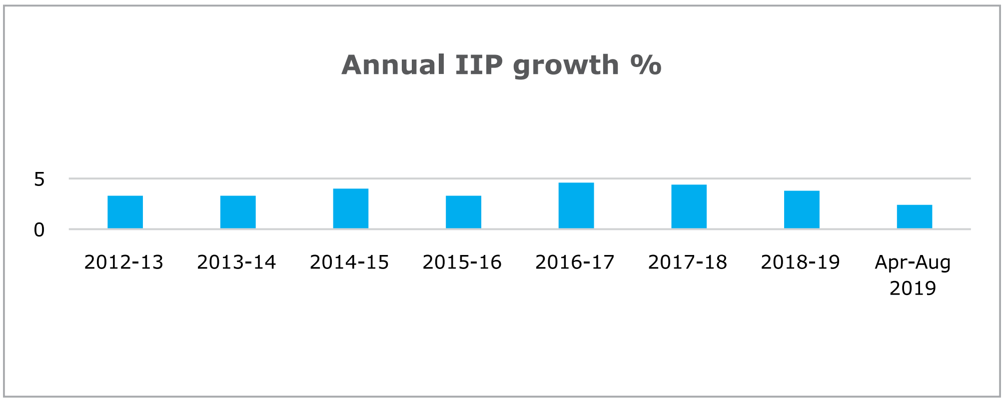
FOREIGN EXCHANGE RESERVES



**Source: RBI (As on 31st March of the financial year)*

Foreign exchange reserves have been rising and can finance about 10 months import bill.

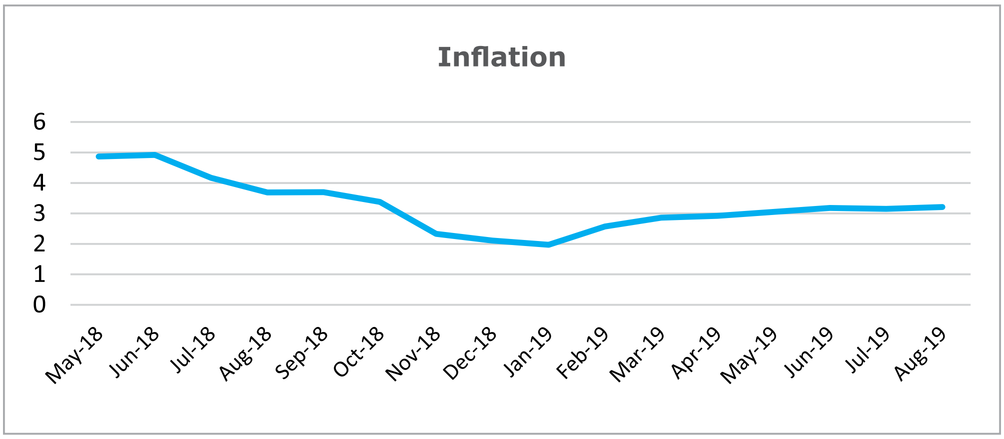
INDEX OF INDUSTRIAL PRODUCTION



**Source: MOSPI*

The Government has initiated many reform measures lately to increase industrial activity, with share of manufacturing targeted to grow from 17% presently to 25% in 2022.

INFLATION



**Source: RBI*

India's inflation rate has moved to a more stable and low level in the last five fiscals with controlling prices remaining a key policy focus area of the government, as per the Economic Survey for 2018-19.

INTERNATIONAL INFLATION RATES

	2015	2016	2017	2018
Australia	1.5	1.2	1.9	1.9
Canada	1.1	1.4	1.5	2.2
China	1.4	2.0	1.6	2.1
EU	0.1	0.2	1.7	1.9
India	5.8	4.9	2.4	4.8
Netherlands	0.6	0.3	1.3	1.7
Spain	-0.5	-0.2	1.9	1.6
USA	0.1	1.2	2.1	2.4
United Kingdom	0.4	1.0	2.6	2.3

**Source: OECD*

India has done well on the inflation front, when compared with major international economies.

INTERNATIONAL EXCHANGE RATES VIS-À-VIS USD

Country	Currency	2015-16	2016-17	2017-18	2018-19	Apr-Oct 2019
UK	Pound sterling	0.66	0.76	0.74	0.76	0.80
India	Rupee	65.60	66.97	64.48	69.87	70.02
China	Yuan	6.36	6.744	6.59	6.73	6.97
Europe	Euro	0.90	0.91	0.84	0.86	0.90
Japan	Yen	120.11	108.36	110.70	111.04	108.22

**Source: Investing (USA)*

The volatility in the global financial markets and rising trend towards protectionism have led to currency volatility across various currencies.

2. PLANS OF THE GOVERNMENT

India has introduced major plans to be implemented in mission mode

Make in India	Green Energy	Start-up India
Make India a Global Manufacturing Hub Focuses on 25 sectors Share of manufacturing: 25% of GDP by 2025. 100% FDI in contract manufacturing.	GoI implementing mega plans in Renewable Energy sector, to achieve 40% cumulative electric power apacity from newable energy sources by 2030	Nurture innovation & start-ups Simplification & Handholding Industry-Academia partnership Funding Support & incentives
JAM Trinity	**Skill India**	**Power For All**
Linking Jan Dhan Accounts, Mobile numbers & Aadhar Cards Facilitate better distribution of subsidies	Scale up skill development efforts in India Train minimum 300 million people by 2022	GoI and State Governments join initiative to provide 24 hour power supply across the country by March 2019
Smart Cities	**Digital India**	**Clean India Mission**
Improve quality of life by enabling local area development through harnessing technology	Creating a knowledge based economy. Digitally empower citizens E-Governance	Sanitation Facilities for every family Village Cleanliness Safe & adequate drinking water supply.

**Source: Various ministries' websites*

3. KEY REFORMS

To achieve the targeted growth and fulfill its vision, India is moving fast on the reform agenda.

GOODS & SERVICES TAX

- "One nation, one tax" was the theme for the GST launch—and this objective has been largely achieved.
- Simplified tax regime.
- Avoids multiplicity of taxes.
- Overall reduction in price.
- Use of information technology – transparent and efficient.

CORPORATE TAX RATES

The government has slashed basic corporate tax rate to 22% from 30% while for new manufacturing companies it has been cut down to 15% from 25%.

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT

The Real Estate (Regulation and Development) Act, 2016 was passed by the Rajya Sabha on 10th March, 2016 and by the Lok Sabha on 15th March, 2016.

Benefits under RERA

- RERA alongwith the Rules would ensure timely completion of projects. This is helping to achieve the vision of Hon'ble Prime Minister "HOUSING FOR ALL".
- The Act helps to curb black money . It makes operations transparent – project information will be available – promoting informed choice for buyers.
- Fast track dispute resolution mechanism through Real Estate Regulatory Authority and Appellate Tribunals across Country.

INSOLVENCY AND BANKRUPTCY CODE

- The Insolvency and Bankruptcy Code (IBC) came into force on 1st December 2016.
- After GST, IBC is the most important legislative reform of our times.
- The IBC seeks to ensure timely admission of insolvency cases and completion within the newly set deadline of 330 days (it was 270 days earlier). The resolution plan under the corporate insolvency resolution process will also be binding on the Centre, State and local authorities.
- The thrust of the Code has been on:
- Rescue and rehabilitation of companies in due course of time.
- Shift in control to the creditor via the resolution professional.
- Empowering the market and commercial stakeholders with timely court intervention.

Cases Filed	14,000
Claims of Financial Creditors	Rs 1,73,359 cr
Overall Recovery after IBC	43% (Rs 74,497 cr)
Overall Recovery before IBC	25.7%
Average life of cases after IBC	18 - 24 months
Average life of cases before IBC	4-8 years
Closing a Business Index rank before IBC	134
Closing a Business Index rank after IBC	108

*Source: IBBI, As of March’ 2019

4. ADVANTAGE INDIA

With Government's resolve to continue the economic reforms process and make India a major player in the global growth process, it has moved places in the World Bank Ease of Doing Business indices- from 100 in 2018 to 63 in 2020. India has improved considerably on various parameters including construction permits and resolving insolvency. Besides, India has some inherent advantages including a stable Government, robust judicial and an Alternate Dispute Resolution mechanism, corporate tax structure, huge domestic market, younger and educated population, healthy start-up ecosystem, robust financial system and low manufacturing labor cost.

Stable Government & Policies

Robust Judicial System & dispute resolution mechanism

Strategic location

Returns on Investment

High Saving Rate

Strong Banking Sector

No Political Interference

Competitive Corporate Tax Rates

Service sector in india

Wide Knowledge base/ Skilled labour pool

Alternate Dispute Resolution

BANKING SECTOR IN INDIA

- The Indian banking system consists of 12 public sector banks, 21 private sector banks, 49 foreign banks, 56 regional rural banks, 1,562 urban cooperative banks and 94,384 rural cooperative banks, in addition to cooperative credit institutions.
- Credit off-take has been surging ahead over the past decade, aided by strong economic growth, rising disposable incomes, increasing consumerism & easier access to credit.
- Demand has grown for both corporate & retail loans; particularly the services, real estate, consumer durables & agriculture allied sectors have led the growth in credit.

SERVICE SECTOR IN INDIA

Services is the dominant sector contributing about 62% to Country's GDP and 25% to employment. India's GDP and has attracted significant foreign investment flows, contributes to exports as well as provides large-scale employment; covers a wide variety of activities including IT & ITeS, trade, hotel and restaurants, transport, storage and communication, financing, insurance, real estate, business services, community, social and personal services, and services associated with construction.

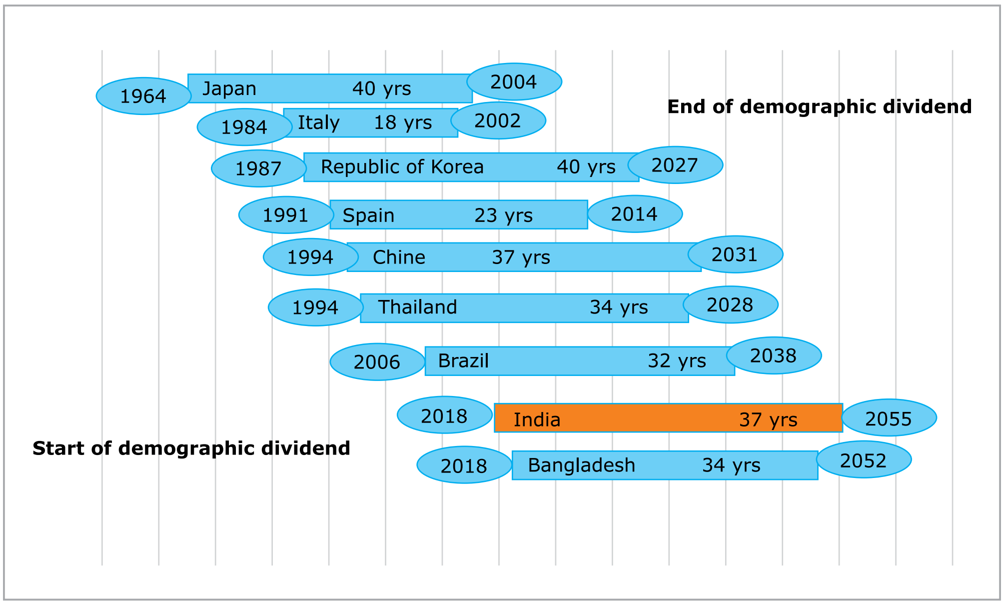
Significant potential for growth as India has huge technical workforce and favourable demographics.

WIDE KNOWLEDGE BASE/ SKILLED LABOUR POOL

Total enrolment in higher education has been estimated to be 37.4 million with 19.2 million males and 18.2 million females. Female constitute 48.6% of the total enrolment.

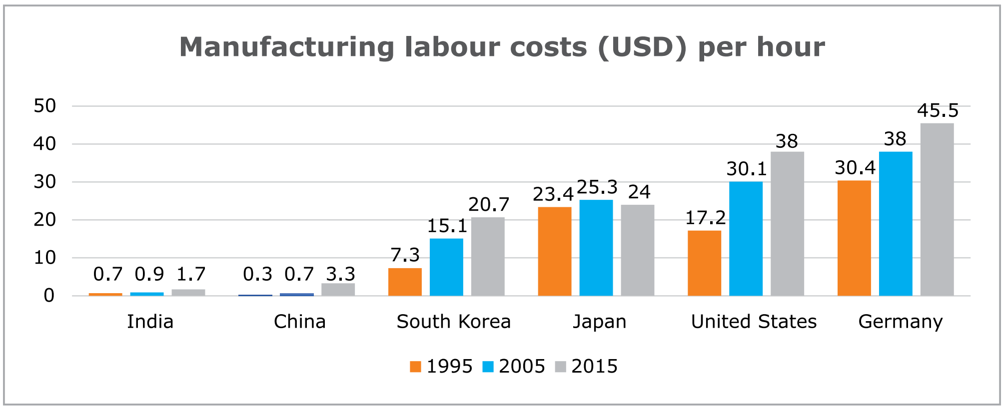
- The highest number of students are enrolled in Arts courses i.e. 93.49 lakhs
- Science is second major stream with 47.13 lakhs
- Commerce is third major stream with 40.3 lakhs students enrolled
- Engineering and Technology is the fourth major steam with 38.52 lakhs students enrolment

PERIOD OF DEMOGRAPHIC DIVIDEND FOR LARGE ECONOMIES



India will continue to enjoy a favorable demography with maximum working population till 2055.

LOW MANUFACTURING LABOUR COSTS



**Source: United Nations Population Fund*

Labour costs remain low as compared to other countries – a major positive if viewed along with demographics and skill base.

ALTERNATE DISPUTE RESOLUTION

- Resolving disputes expeditiously is one of the important element of "ease of doing business" in any jurisdiction. Govt. of India has enacted Commercial Courts Act, 2015 constituting commercial courts for time bound disposal of commercial disputes by courts.
- The ADR mechanism too has been strengthened by amending the Arbitration & Conciliation Act, 1996 in 2015 and again in 2019. These amendments encourage time bound resolution of commercial disputes through institutional mechanism for arbitration, conciliation and mediation."

LARGE CONSUMER BASE

Consumer Archetype	Average Annual Household Income ($)	Average age (years)	Access to Smartphones	Share of population 2018 -> 2030
Poor Rurals	2800	43	5%	29% - 9%
Poor Dreamers	5200	41	10%	14% - 11%
Young and Savvy	5200	21	65%	11% - 15%
Middle India	6800	47	10%	19% - 21%
Connected Aspirants	6800	39	95%	15% - 19%
Conservative Rich	40000	49	15%	4% - 8%
Sophisticated Rich	40000	35	95%	7% - 17%

India has a huge domestic market with a rapidly increasing middle class, currently estimated over 300 million.

5. EMERGING SECTORS FOR INVESTMENT

The improving business climate and investor friendly policies have encouraged many big investors from across the globe to look at India as the destination for future investments/expansion of current businesses.

What are the investment opportunities in India?

In line with the emerging economic scenario and Government's focus on facilitating business friendly policies, there will be tremendous opportunities for investment. This section highlights some of the major growth areas in the years ahead and foreign direct investment (FDI) policies governing such investments.

I. FOOD PROCESSING

32 % - Share in India's food market

11.60 % - Share in total employment

11.70 % - Share in India's exports

142 % - Cropping intensity

- By 2020, Indian Food and Retail market is projected to touch $ 828.92 bn.
- By 2020, the Indian Dairy industry is expected to double to $ 140 bn.
- By 2030, Indian annual household consumption to treble, making India 5th largest consumer.
- The budget outlay has gone up by **83%** (Rs. 1,38,563.97 cr) in 2019-20 from 2018-19.

FDI POLICY

- 100 % FDI under automatic route.
- Food Processing sector has been assigned priority status for bank credit.
- 60 Agri Export Zones (AEZ) have been set up across the country.

II. ELECTRIC VEHICLES

- The national government has pledged to ensure 30% of all vehicles on the road to be electric by 2030 from less than 1 per cent today.
- Government has lowered GST rate on electric vehicles from 12% to 5%. Also, provision of an additional income tax deduction of Rs. 1.5 lakh on the interest paid on loans taken to purchase electric vehicles.
- Also budget announced an outlay of US$1.5 billion for Phase 2 of the FAME.
- By 2030, sales of electric scooters are expected to cross 2 million a year.
- Cumulative FDI inflow of around US$ 19.29 billion in automobiles sector between April 2000 – June 2018.
- The Government of India expects automobile sector to attract US$ 8-10 billion in local and foreign investments by 2023.

FDI POLICY

- 100% FDI is permitted under the automatic route.

III. E-COMMERCE

- The e-commerce has transformed the way business is done in India.
- The budget has announced relaxing norms for **single brand retail.**
- The Indian e-commerce market is expected to grow to US$ 200 billion by 2026 from US$ 38.5 billion as of 2017.

FDI POLICY

FDI is mainly permitted for undertaking B2B activities and only a single brand retail trader.

- In multi brand retail/ inventory based model, no FDI is permitted.
- It has been provided that market place entity will not directly or indirectly influence price of products sold by vendors on its platforms and will not permit more than 25% of the sales on its platforms from one vendor or their group companies.
- Currently, for single-brand retailers with over 51% FDI, the policy requires that 30% of value of goods has to be procured from India as part of the local sourcing requirement. This can be met as an average during the first five years, and thereafter annually towards its Indian operations. On Wednesday, 28 August 2019, the cabinet decided that all procurements made from India by a single-brand retailer for that brand shall be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported.

IV. ENERGY

- Total FDI inflows in the power sector reached US$ 14.32 billion during April 2000 to March 2019. India's rank jumped to 24 in 2018 from 137 in 2014 on World Bank's Ease of doing business - "Getting Electricity" ranking.
- India is ranked 4th in wind power, 5th in solar power and 5th in renewable power installed capacity as of 2018.
- The government plans to double the share of installed electricity generation capacity of renewable energy to 40 per cent till 2030.
- India's power sector is forecasted to attract investments worth Rs 9-9.5 trillion (US$ 128.24- 135.37 billion) between FY19-23.

FDI POLICY

- 100 per cent FDI is allowed under the automatic route in the power segment and renewable energy.

V. RENEWABLES

- 5th largest installed capacity of renewable energy in the world.
- 4th largest installed capacity of wind and 5th largest of solar power in the world.
- World's largest solar plant (648 MW), commissioned within a record 8 months, and world's largest solar park (2 GW) are now in India.
- Proposed solar cities & parks: 60 Solar Cities approved and $ 1.3 bn allocated for setting up 50 Solar parks of 40GW by 2020.

FDI POLICY

- **Up to 100% FDI** is allowed under the automatic route for renewable energy generation and distribution projects subject to provisions of The Electricity Act, 2003.

VI. INFRASTRUCTURE

- Infrastructure remains key to growth process and the Budget provides for an investment of **$1.4 trillion** in the next five years.
- Third largest construction market globally by 2025.
- The Construction industry in value terms is expected to record a CAGR of 15.7% to reach $ 738.5 bn by 2022.
- Industrial corridors: Five industrial corridors planned
- 100 smart cities to be developed by 2020
- 6 mega ports planned

FDI POLICY

- 100% FDI under automatic route is permitted in completed projects for operations and management of townships, malls/shopping complexes, and business constructions.
- 100% FDI is allowed under the automatic route for urban infrastructures such as urban transport, water supply and sewerage and sewage treatment.
- There is also no lock-in period and foreign investors are permitted to exit from the project after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage. However, sale of undeveloped plot is not permitted

VII. TRANSPORTATION

PORTS & SHIPPING

- 142 capacity expansion master plans for projects worth US$14.19 bn.
- 6 new mega ports to be built under Sagarmala Project.

RAILWAYS

- Indian Railways is the world's 3rd largest railway network under single management, covering 66000 route km.
- US$130 bn investment envisaged by Indian Railways over the next 5 years.

ROADS & HIGHWAYS

- 2nd largest road network in the world.
- 15% share of GDP on logistics & transportation.
- No. 1 FDI in Indian roads sector by MAIF (Maryland Automobile Insurance Fund).
- US$1.58 trn – estimated investment in 2019.
- Bharatmala Pariyojana Phase-1 to be implemented at a cost of US$82 bn.

FDI POLICY

- 100% FDI under automatic route in shipping, railways & roads.
- 10-year tax holiday is extended to enterprises engaged in the business of developing, maintaining, and operating ports, inland waterways, and inland ports.

VIII. REAL ESTATE

- Real estate sector in India is expected to reach a market size of US$ 1 trillion by 2030 from US$ 120 billion in 2017 and contribute 13 per cent of the country's GDP by 2025.
- Construction is the fourth largest sector in terms of FDI inflows.

- Growing requirements of space from sectors such as education and healthcare, ecommerce and logistics.
- Warehousing space in top eight Indian cities increased 22 per cent y-o-y in 2018 to 169 mn sq. ft. Investments of US$ 7.76 billion are expected in India's warehousing between 2018-20.

FDI POLICY

- The government has allowed FDI of up to 100 per cent for townships and settlements development projects.
- Real Estate (Regulation and Development) Act (RERA) 2016 will make the sector more transparent.
- GST rate brought down to 5 percent.

IX. DEFENCE

- No. 1 arms importer in the world.
- US$1 trn by 2025: potential of the defence manufacturing sector.
- US$44.7 bn earmarked for defence and security, highest ever allocation in budget 2019-2020.
- India plans to spend $ 130 bn on military modernization in the next 5 years.
- Partner with foreign companies for joint ventures, technology transfer arrangements and tie-ups.
- Ongoing DRDO projects in India of worth $7.3 bn.
- 3rd largest defence spender in the world after US and China.
- **Defence Procurement Procedure (DPP) 2016** provides great impetus to the MSMEs/ ancillary units with certain categories of 'Make' products earmarked exclusively for MSMEs.

FDI POLICY

- 100% FDI in defence sector: Up to 49% under automatic route; FDI above 49%, through Government route where it is likely to result in access to modern technology.
- Defence Production Policy 2018 to promote domestic production by public sector, private sector and MSMEs.

X. MINING & METALS

- 2nd largest steel producer in the world
- 3rd largest global producer of coal in FY18
- 3rd largest crude steel producer in FY18
- 4th in terms of iron ore production globally
- 9th largest bauxite reserves in the world
- Indian mining industry is estimated to reach US$126 bn by 2025
- US$14.3 bn FDI inflows into the sector Apr 2000-Jun 2018

FDI POLICY

- 100 per cent FDI allowed in the mining and steel sector and exploration of metal and non metal ores under the Automatic Route.
- 100% FDI allowed in Coal and Lignite mining under automatic route.
- 100 per cent FDI via automatic route in coal mining space.

XI. DIGITALIZATION

- $100 bn worth of digital transactions potential in 2020.
- India's domestic tech-market is the fastest growing in Asia-Pacific, witnessing growth of over 11% in 2016-17.
- The revenue from Information Technology and Business Process Management (IT and BPM) industry in India is estimated to reach $ 350 bn by 2025.

FDI POLICY

- Up to 100% FDI is allowed in Data processing, Software development and Computer consultancy services; Software supply services; Business and management consultancy services, Market research services, Technical testing and Analysis services, under automatic route.

XII. HEALTHCARE

- Public health spend as percentage of GDP has increased from 1.2 percent in 2014-15 to 1.5 percent in 2018-19.
- The Government has launched major initiatives for the healthcare sector in India, majorly the Ayushman Bharat scheme for which Rs. 249.96 crore has been allocated.

FDI POLICY

- 100% FDI is allowed under the automatic route for greenfield projects.
- For investments in brownfield projects, up to 100% FDI is permitted under the government route.
- 100% FDI for insurance intermediaries.

XIII. TELECOMMUNICATION

- The National Digital Communications Policy 2018 has envisaged attracting investments worth US$ 100 billion in the telecommunications sector by 2022.
- Revenues from the telecom equipment sector are expected to grow to US$ 26.38 billion by 2020.
- The number of internet subscribers in the country is expected to double by 2021 to 829 million and overall IP traffic is expected to grow 4-fold at a CAGR of 30 per cent by 2021.
- GoI is planning to develop 100 smart city projects, where IoT would play a vital role in development.
- Indian Mobile Value-Added Services (MVAS) industry are expected to reach US$ 23.8 billion by 2020.

FDI POLICY

To propel the sector on a growth path, the Government of India has launched the National Digital Communications Policy, 2018, which envisages attracting investments worth US$ 100 billion in the telecommunications sector by 2022.

- FDI upto 49% under automatic route and beyond 49% upto 100% under the Government route is permitted.
- FDI in this sector is subject to licensing by the Department of Telecommunications and security clearance.

XIV. ILLUSTRATIVE LIST OF INVESTMENT OPPORTUNITIES IN VARIOUS SECTORS

The following table presents an illustrative list of projects available for investment in Private (P) and Government (G) sectors across India.

S.No.	Type of Industry	Investment opportunity in US$	No of Projects (P/G)
1	Auto Components	683 mn	5 Projects (P 4, G 1)
2	Automobiles	638 mn	2 Projects (1 P, 1 G)
3	Aviation	3 bn	9 Projects (9 G)
4	Capital Good	65 mn	7 Projects (3 P and 4 G)
5	Construction	33 bn	1046 Projects(22 P , 1024 G)
6	Food Processing	424 mn	37 Projects (25 P , 12 G)
7	Healthcare	1 bn	82 Projects (9 P, 73 G)
8	IT and BPM	1 bn	303 Projects (7 P, 296 G)
9	Metals and Mining	1 bn	4 Projects(2 P, 2 G)
10	Oil and Gas	2 bn	10 Projects (1 P, 9 G)
11	Ports and Shipping	16 bn	113 Projects (3 P, 110 G)
12	Railways	9 bn	49 Projects (1 P, 48 G)
13	Renewable Energy	96 mn	8 Projects (1 P, 7 G)
14	Retail and E- Commerce	2 mn	2 Projects (2 G)
15	Road and Highways	57 bn	1,093 Projects (1 P, 1,092 G)
16	Telecom	110 mn	23 Projects (23 G)
17	Thermal Power	7 bn	7 Projects (2 P, 5 G)
18	Tourism and Hospitality	4 bn	296 Projects (5 P, 291 G)

**Source: Invest India*

6. ENTRY STRATEGIES FOR FOREIGN COMPANIES IN INDIA

This section presents alternate entry channels for foreign investors looking at India as an investment destination or expanding their operations in India. Besides, it highlights the various processes, the taxation structure governing the investment and other relevant laws for business and industry.

STARTING OPERATIONS IN INDIA

Foreign entities can set up their business operations in India either as unincorporated or incorporated entities.

- **Unincorporated entities:** Liaison Office (LO), Branch Office (BO), Project Office (PO), etc.
- **Incorporated entities:** Private Limited Company, Limited Liability Partnership (LLP), etc.

JOINT VENTURE WITH AN INDIAN PARTNER

Foreign Companies can set up their operations in India by forming strategic alliances with Indian partners. Joint Venture may entail the following advantages for a foreign investor:

- Established distribution/ marketing set up of the Indian partner
- Available financial resource of the Indian partners
- Established contacts of the Indian partners which help smoothen the process of setting up of operations

WHOLLY OWNED SUBSIDIARY COMPANY

Foreign companies can also to set up wholly-owned subsidiary in sectors where 100% foreign direct investment is permitted under the FDI policy.

UNINCORPORATED ENTITIES

AS A FOREIGN COMPANY

Foreign Companies can set up their operations in India through

- **Liaison Office/Representative Office**
- **Project Office**
- **Branch Office.**

Such offices can undertake any permitted activities. Companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India.

Establishment of branch office/ liaison office / project office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 (hereinafter referred to as "Regulations").

KEY FEATURES ARE AS UNDER:

LIAISON OFFICE/REPRESENTATIVE OFFICE

Liaison office acts as a channel of communication between the principal place of business or head office and entities in India. Liaison office cannot undertake any commercial/trading/business activity directly or indirectly and cannot, therefore, earn any income in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Liaison Office is required to maintain itself out of inward remittances received from abroad through normal banking channel. Liaison Office can be established with the approval from Authorized Dealer Bank of RBI (AD Bank), which is subject to fulfilment of prescribed conditions as per the guidelines issued by the Reserve Bank. Since a LO is not permitted to undertake any business activity and therefore cannot earn income in India, it is not subject to tax in India.

PROJECT OFFICE

Foreign Companies planning to execute specific projects in India can set up temporary project/ site offices in India. RBI has granted general permission to foreign entities to establish Project Offices in India subject to specified conditions. Such offices cannot undertake or carry on any activity other than the activity relating and incidental to execution of the project. Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI. **Liable to tax on income earned in India @ 41.6% - 43.68% depending upon the income level. PO is permitted to remit post-tax profits outside India on satisfaction of the Authorized Dealer (AD) bank, filing of prescribed documents with AD Bank required.**

BRANCH OFFICE

Branch Office is set-up for carrying activities in the course of business. It can be established with the approval of the Authorized Dealer Bank of RBI (AD Bank), which is subject to fulfilment of prescribed conditions as per the guidelines issued by the RBI. Branch Office can only undertake the activities permitted under the Regulations. The list of activities permitted activities includes export/import of goods, rendering professional or consultancy services, carrying out research work in which the parent company is engaged, promoting technical or financial collaborations between Indian companies and parent or overseas group company, representing the parent company in India and acting as buying/ selling agent in India, rendering services in Information Technology and development of software in India, rendering technical support to the products supplied by parent/group companies and representing a foreign airline/shipping company. Normally, the branch office should be engaged in the activity in which the parent company is engaged. **Liable to tax on income earned in India @ 41.6% - 43.68% depending upon the income level. BO is permitted to remit post-tax profits outside India on satisfaction of the Authorized Dealer (AD) bank, filing of prescribed documents with AD Bank required.**

INCORPORATED ENTITIES AND TAXATION

An incorporated business (also called a corporation) is a type of business that offers many benefits over being a sole proprietor or partnership, including liability protection and additional tax deductions. Forming a corporation also allow raising of capital through sale of shares of company.

PRIVATE LIMITED COMPANY

Private Limited Company has Independent Legal Status. Company can be set up subject to FDI guidelines. Permitted activities are specified in memorandum of association of the company, subject to FDI guidelines. A minimum of 2 shareholders are required to incorporate a Private Company. Maximum number of shareholders in Private Companies are restricted to 200 (join shareholders are treated as single members). Minimum of 2 directors are required on the Board of Directors of a Private Limited Company. One of the directors must be an Indian resident i.e. they must have stayed in India for not less than 182 days in the Financial Year. Private Limited Company is liable to tax on global income @ 17.15 % - 34.94% depending upon the nature of business and income level. Company is liable to Minimum Alternate Tax @ 15.60% to 17.47% (depending upon the amount of book profits) on its book profits. Does not require any approval for remittance of post-tax profits. Dividend declared will be subject to DDT @ 20.56% in India. Exit can be through sale of shares or liquidation.

LIMITED LIABILITY PARTNERSHIP (LLP)

LLP has Independent Legal Status. LLP can be set up subject to FDI guidelines. LLP has to be engaged in sectors in which 100% FDI is allowed under automatic route and no FDI linked conditions are applicable. Minimum two partners are required to incorporate an LLP. Amongst the partners, there must be at least two designated partners, one of whom must be a resident in India i.e. must have stayed in India for not less than 182 days in the preceding year. LLP is liable to tax on global income @ 31.20% - 34.94% depending upon the income level. LLP is liable to Alternate Minimum Tax @ 21.55% on its book profits. Does not require any approval for remittance of post-tax profits. Unlike a company, LLP is not required to pay tax on withdrawal of profits from partners’ capital. Exit can be through sale of interest or dissolution.

INCORPORATION PROCESS (AS PER COMPANIES ACT, 2013)

The important steps with an indicative time frame involved in for incorporating a company in India include the following:

OBTAINING DSC AND DIN

- Application for incorporating a Company requires Directors Identification Number (“DIN”) for all the promoters of the company.
- Obtaining a DIN requires one to have a Digital Signature Certificate (“DSC”).
- For Indian Residents - Permanent Account Number (“PAN”), Digital Signature (“DSC”) with PAN encryption and Directors Identification Number (“DIN”) is mandatory for initiating the incorporation process.
- For Indian Non-Residents- Passport in place of PAN is required, along with address proof is required for obtaining a DIN. All such documents require apostille attestation
- No person can be appointed as a Director without DIN and having duplicate DIN is an offence.

NAME APPROVAL

- Once DIN is obtained, the application for incorporating a Company starts with obtaining the approval for the name of the Company with the Registrar of Companies.
- The Registrar of Companies must be provided with 2 preferred names, which should not be similar to the names of any existing companies along with the proposed objects of the Company. A no-objection certificate must be obtained in the event that the word is not an 'invented word'.
- The proposed name must not violate the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950. MCA has introduced Central Registration Centre having territorial jurisdiction all over India to process and dispose of the name reservation applications.

FILING OF CHARTER DOCUMENTS

- Once the name approval is obtained, the memorandum and articles of the company have to be prepared in accordance with the needs of the business and the same must be filed with the RoC. Individual subscribers having valid DIN shall file the memorandum and articles of the company in electronic form by digitally signing e-form INC 33 and e-form INC 34. However, individual subscribers who do not have a valid DIN and subscribers which are body corporate shall sign the memorandum and articles in physical and file along with SPICe e-form INC 32.
- The RoC will need to be provided with certain information, such as the proposed first directors of the company and the proposed address of its registered office. The registered office is required to be finalized within 15 days and intimated within 30 days of incorporation.
- Affidavits and declarations to be provided by subscribers and requires notarisation and apostillisation in the respective home countries.
- One of the directors has to be resident in India, for at least 182 days in the previous calendar year.
- Companies that meet certain thresholds must have independent directors and women director on the Board.

CERTIFICATE OF INCORPORATION

- The Certificate of Incorporation provided by the RoC at the end of the incorporation process acts as proof of the incorporation of the company.
- The company should be capitalized and the corresponding share certificates be issued within a period of 2 months of receiving the certificate of incorporation.

POST INCORPORATION

Once a company is incorporated, it must undertake certain other actions in order to become fully functional:

- The company must, within 30 days from incorporation, hold its first board meeting. The first auditor should be appointed by the Board within 30 days from the date of its incorporation who shall hold the office till the conclusion of it first annual general meeting. If in case, the Board fails to appoint within 30 days, shareholders can appoint the first auditor, within 90 days of incorporation.
- The company may appoint additional directors (if required).
- The company must register itself with statutory authorities such as indirect tax authorities and labour authorities.
- The company must open a bank account. The company must put in place the contracts with suppliers and customers that are essential to running the business.

MERGERS AND ACQUISITIONS

A merger in normal parlance means a combination of two or more companies into one. Sections 230 to 232 of the Companies Act, 2013 deal with the analogous concept of schemes of arrangement or compromise between a company, its shareholders and/or its creditors.

The modes most commonly adopted are a share acquisition or an asset purchase:

1. A share acquisition may take place by purchase of all existing shares of the target by the acquirer, or by way of subscription to new shares in the target so as to acquire a controlling stake in the target or a combination of the two methods.
2. An asset purchase involves the sale of the whole or part of the assets of the target to the acquirer.

TAXES AND DUTIES

INCOME TAX

A number of acquisition and restructuring options are recognized under Indian tax laws, each with different set of considerations:

- Amalgamation (i.e. a merger which satisfies the conditions specified in the ITA)
- Asset sale / Slump sale (which satisfies the conditions specified in the ITA);
- Transfer of shares; and
- Demerger or spin-off (which satisfies the conditions specified in the ITA).

STAMP DUTY

Stamp duty is a duty payable on certain specified instruments / documents. The amount of the stamp duty payable would depend on the state specific stamp laws. An insufficiently stamped document is not admissible as evidence in a Court of law of India.

INDIRECT TAX

Prior to July 1, 2017, a series of central and state taxes were levied at various stages of the production and distribution process. These included central excise duty on manufacture, central sales tax on inter-state sale, sales tax / value added tax on intra-state sale, and service tax on the rendering of services. Moreover, credit for input taxes paid was not uniformly available across central and state levies thereby leading to a cascading of taxes. With the introduction of the Goods and Services Tax ("GST"), India now has unified indirect tax system.

OTHER LEVIES

Other taxes that may also have to be considered in structuring M&A which might arise due to applicability of any specific law related to the nature of industry. While structuring any investment it is necessary to adopt a holistic approach and integrate all possible legal and tax considerations in a manner that best achieves the strategic and business objectives.

INCOME TAX

I. TAXABILITY IN INDIA – BRIEF OVERVIEW

Under the Income Tax Act, 1961, taxability in hands of a person depends on its status of residence. The status of residence can be broadly categories as "Resident" or "Non-resident." A resident is taxed on its worldwide income in India arising during the Financial Year. A non-resident is taxed only on income that is received in India, or that accrues or arises, or is deemed to accrue or arise, in India during the Financial Year. Financial Year is the period of 12 months commencing on the 1st day of April every year.

II. DETERMINATION OF STATUS OF RESIDENCE

The Act provides for the manner of determination of status of Residence for Companies, Individuals, Partnership Firms, etc. The manner of determination of status of residence is different for different category of taxpayers.

A **Company** is treated as a resident of India in any previous year if it is an Indian company, or its Place of Effective Management (PoEM) in that year is in India. An Indian company is always resident even if it is controlled from a place located outside India or even if shareholder of Indian company controlling more than 51% voting power are non-residents. A foreign company will be regarded as a resident in India if its PoEM is in India in that year. The term PoEM has been explained to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. CBDT has laid down guidelines for determination of PoeM. The guidelines lay down the concept of determination of PoEM based on bifurcation of companies engaged in active business outside India and other companies. The Guidelines clarify that the PoEM provisions will not apply to a foreign company having turnover or gross receipts of INR 500 million or less in a year.

A **Partnership firm, LLP, and other non-individual entities** are treated as resident in India if any portion of their control and management is in India. They are non-resident if their control and management is situated wholly outside India.

An **Individual** is treated as resident in India if he in India for a total period(s) of 182 days or more. An Individual is also said to be a resident in India if he stays in India for a total period(s) of 60 days or more in a year and his stay in India in the immediately preceding 4 years is 365 days or more. In other cases, Individuals are treated as non-residents.

III. Double Tax Avoidance Agreements

In case there exists a Treaty between India and a Foreign Nation for avoidance of Double Taxation, the provisions of the Act or the Treaty, whichever is beneficial, applies to the taxpayer. Relief is granted in respect of income chargeable to tax, both under the Income Tax Act of India and the domestic tax laws in the other country, in order to promote mutual economic relations, trade and investment. The Treaty also provides for mechanism to determine credit of taxes paid abroad against the taxes paid in the country of residence so as to avoid double taxation. At present, India has comprehensive Double Tax Avoidance Agreements with around 88 countries.

IV. TAX RATES

A. CORPORATE TAX RATE – DOMESTIC COMPANIES

All Domestic Companies have been given an option to pay tax at concessional rate of 22 per cent plus Surcharge and Health and Education Cess as applicable under section 115BAA of the Act. Further, Domestic Companies setup and registered on or after 1st October, 2019 and engaged solely in the business of manufacturing or production of any article or thing and research in relation to, or distribution of such article or thing manufactured or produced by it have been given an option to pay tax at concessional rate of 15% under section 115BAB of the Act provided that such companies commences manufacturing on or before 31st day of March, 2023. Such companies who opt to pay tax at concessional rates of 22% under section 115BAA or 15% under section 115BAB are required to forego various profit and investment linked exemptions/incentives as specified under such provisions.

Companies who does not opt to pay tax at concessional rates of 22% under section 115BAA or 15% under section 115BAB are required to pay tax at the rates prescribed under the First Schedule to the Finance (No. 2) Act, 2019. Tax rate of 25% (plus surcharge and health and education cess as applicable) is prescribed in respect of a company whose turnover in the Financial Year 2017-18 did not exceed Rs. 400 crores and tax rate of 30% (plus surcharge and health and education cess as applicable) is prescribed in respect of a company whose turnover exceeded Rs. 400 crores in Financial Year 2017-18.

The summary of effective tax rates applicable in respect of a Domestic Company is as under:

Income	Option to pay tax at concessional rates under the provisions of the Income Tax Act, 1961						Tax rates under First Schedule to the Finance (No. 2) Act, 2019					
	Domestic Manufacturing Companies incorporated on or after 1st October 2019 (Section 115BAB)			Domestic Companies (Section 115BAA)			Domestic Companies whose turnover in Previous Year 2017-18 does not exceed Rs. 400 crores			Domestic Companies whose turnover in Previous Year 2017-18 exceeds Rs. 400 crores		
	Tax rate (%)	Sur-charge (%)	Effective tax rate* (%)	Tax rate (%)	Sur-charge (%)	Effective tax rate* (%)	Tax rate (%)	Sur-charge (%)	Effective tax rate* (%)	Tax rate (%)	Sur-charge (%)	Effective tax rate* (%)
Upto Rs. 1 crore	15	10	**17.16**	22	10	**25.17**	25	0	**26.00**	30	0	**31.20**
More than Rs. 1 crore but upto Rs. 10 crores	15	10	**17.16**	22	10	**25.17**	25	7	**27.82**	30	7	**33.38**
More than Rs. 10 crores	15	10	**17.16**	22	10	**25.17**	25	12	**29.12**	30	12	**34.94**

**The tax rates are inclusive of Surcharge, wherever applicable and Health and Education Cess @ 4%*

B. CORPORATE TAX RATE – BRANCH/PROJECT OFFICES OF FOREIGN COMPANIES

Foreign Companies and branch/project offices of such companies are liable to tax at the rate of 40% plus Surcharge and Health and Education Cess as applicable. The summary of effective tax rates applicable in respect of a Foreign Company and its branch/project offices is as under:

S. No.	Income	Income Tax Rates (AY 2020-21)		
		Tax Rate	Surcharge	Effective Tax Rates*
1	Upto Rs. 10 million	40%	-	41.6%
2	Above Rs.10 million but less than Rs. 100 million	40%	2%	42.432%
3	Above Rs.100 million	40%	5%	43.68%

**The tax rates are inclusive of Surcharge, wherever applicable and Health and Education Cess @ 4%*

C. TAX RATES – OTHER THAN COMPANIES (RESIDENT AND NON-RESIDENT)

Resident as well as non- resident Individuals, Association of Persons and Body of Individuals are liable to tax as per the slab rates as prescribed plus Surcharge and Health and Education cess as applicable. Resident as well as non-residents Firms, Limited Liability Partnerships are liable to tax at the rate of 30 % plus Surcharge and Health and Education cess as applicable

The summary of effective tax rates applicable in respect of an Individual, Association of Person and Body of Individual, Firms, Limited Liability Partnerships is as under:

S. No.	Income	Individual/ HUF/AOP/ BOI			Firm/LLP		
		Base tax rate	Sur-charge	Effec-tive Tax Rate*	Base tax rate	Sur-charge	Effec-tive Tax Rate*
1	Upto Rs.2,50,000	Nil	-	-	30%	-	31.20%
2	Between Rs. 2,50,001 and Rs. 5,00,000	5%	-	5.2%		-	31.20%
3	Between Rs. 5,00,001 and Rs. 10,00,000	20%	-	20.8%		-	31.20%
4	Between Rs. 10,00,001 and Rs. 50,00,000	30%	-	31.2%		-	31.20%
5	Between Rs. 50,00,001 and Rs.1 crore	30%	10%	34.32%		-	31.20%
6	Between Rs.1,00,00,001 and Rs.2 crores	30%	15%	35.88%		12%	34.944%
7	Between Rs.2,00,00,001 and Rs.5 crores	30%	25%	39%		12%	34.944%
8	Above Rs.5 crores	30%	37%	42.744%	30%	12%	34.944%

**The effective tax rate is inclusive of Surcharge, wherever applicable and Health and Education Cess @ 4%*

V. TAXABILITY OF INCOME UNDER CERTAIN SPECIFIED HEADS

A. DIVIDEND INCOME TAXABILITY

- Dividend payable by Domestic Company is liable to Dividend Distribution Tax (DDT) @ 20.56% in the hands of the Domestic Company. No tax credit is allowed in respect of DDT either to the Company or to the shareholder under the Act. Credit may be allowed to the taxpayer under the Treaty in respect of the dividend income which may be taxable overseas as well.
- Dividend received from Indian Companies is exempt in the hands of the non-resident
- Dividend received from Indian companies in excess of Rs. 10,00,000 is taxable in the hands of resident (excluding companies) @ 10 %

B. CAPITAL GAINS TAXABILITY

a) CAPITAL GAINS TAXABILITY – OVERVIEW

- Capital gains refer to the gains made on the transfer of a capital asset. Capital assets includes property of any kind including fixed assets but does not include inventory.
- Capital assets are classified as short-term capital assets or long-term capital assets based on their period of holding and the gain arising from transfer of such assets are called short-term capital gains or long-term capital gains respectively
- Short-term capital assets are capital assets held for a period of not more than 36 months (24 months for immovable properties, 12 months for listed securities). Short term capital gains on such assets are usually taxed at the normal rate of tax. Capital assets that do not qualify as short-term capital assets are considered as long-term capital assets.
- Long-term capital gains are eligible for a concessional rate of tax and inflation adjustment of cost of purchase and cost of improvement. Normally, long-term capital gains are determined after adjusting the cost for inflation as per prescribed multiplier based on period of holding.

b) CAPITAL GAINS TAXABILITY – SALE OF EQUITY IN INDIAN COMPANY

- Shares in an Indian Company are said to be capital assets that are held in India. Hence, transfer of shares of an Indian Company, even by a foreign company to another company (or a non-resident to another non-resident) is taxable in India.
- Purchase of shares in Indian Company from a non-resident investor attract applicable withholding tax.
- Even indirect sale of shares, i.e., sale of shares of holding company of Indian Company, may attract Capital Gains tax in India if the Indian Company holds significant value in the whole deal.

c) CAPITAL GAINS TAX RATES - RESIDENTS

The capital gain tax rates applicable in the hands of a Resident in respect of different category of transactions are as under:

S.NO	Particulars	STCG Rates	LTCG Rates
1.	Sale transactions of equity shares in a Company or unit of an equity oriented fund or unit of a business trust which attracts STT	15%	10% of such LTCG, in excess of Rs. 1,00,000, without indexation
2.	Sale transactions of listed securities (other than a Unit or Zero Coupon Bond) on which STT is not paid		
	a) Individuals	Slab Rates	20% with indexation or 10% without indexation
	b) Firms including LLP	30%	
	c) Domestic Companies	25%/30% based on Income in PY 2017-18	
3.	Sale transaction other than mentioned above		
	a) Individuals	Slab Rates	20% with indexation
	b) Firms including LLP	30%	20% with indexation
	c) Domestic Companies	25%/30% based on Income in PY 2017-18	20% with indexation

Note 1: Surcharge and Health and Education Cess will be levied additionally. Enhanced Surcharge of 25% and 37% will not be applicable on Individuals in respect of transaction covered under Category "I". Surcharge of 15% will be continue to be applicable in case the gain amount exceeds Rs. 1 crores

Note 2: In case of Bond and Debentures, tax on LTCG will be charged @ 20% without indexation.

d) CAPITAL GAINS TAX RATES – NON-RESIDENTS

The capital gain tax rates applicable in the hands of a Non- Resident in respect of different category of transactions are as under:

S.NO	Particulars	STCG Rates	LTCG Rates
1.	Sale transactions of equity shares in a Company or unit of an equity oriented fund or unit of a business trust which attracts STT	15%	10% of such LTCG, in excess of Rs. 1,00,000, without indexation
2.	Sale transactions of listed securities (other than a Unit or Zero Coupon Bond) on which STT is not paid (in case securities are purchased in Indian Currency)		
	a) Individuals	Slab Rates	10% without indexation or 20% with indexation
	b) Firms including LLP	30%	
	c) Domestic Companies	40%	
3.	Sale of unlisted securities or shares of a private limited company	Slab Rates as stated above in S. No. II	10% without indexation
4.	Sale of specified Mutual Fund units by specified Offshore Funds under section 115AB/ Sale of specified Bonds or Global Depository Receipts by a Non-resident under section 115AC	Slab Rates as stated above in S. No. II	10% without indexation
5.	Sale of securities, other than specified Mutual Fund units covered above in S. No. IV, by a Foreign Institutional Investor	30%	10% without indexation
6.	Shares or debentures in an Indian Company in case purchased in foreign currency (other than those covered above)	Slab Rates as stated above in S. No. II	20% without indexation [Note 2]
7.	Sale transaction other than mentioned above - Individuals/ Firms/LLP's/ Companies	Slab Rates as stated above in S. No. II	20% with indexation

Note 1: Surcharge and Health and Education Cess will be levied additionally. Enhanced Surcharge of 25% and 37% will not be applicable on Individuals in respect of transaction covered under Category "I" and Category IV. Surcharge of 15% will be continue to be applicable in case the gain amount exceeds Rs. 1 crores

Note 2: In case of non-residents, capital gains on transfer of shares or debentures in Indian companies are computed in the foreign currency in which the shares or debentures were acquired, and the capital gains are then reconverted into Indian currency to compute the tax liability thereon

VI. WITHHOLDING TAX RATES

Tax is required to be withheld at the time of making paying to non-residents. Summary of withholding tax rates is as under:

S. No.	Nature of payment	WHT rate (%)*
1	Interest on foreign currency loan (subject to conditions)	5
2	Interest on investment in rupee denominated bonds issued by Indian company or government security	5
3	Interest received from specified infrastructure debt fund	5
4	Interest received from borrowings from Indian concern or Government in foreign currency other than those covered above	20
5	Royalty and technical fees (subject to conditions)	10
6	Long term capital gain arising on: • Sale of specified Mutual Fund units by specified Offshore Funds • Sale of specified Bonds or Global Depository Receipts by a Non-resident • Sale of equity shares of a company or units of equity oriented fund/ business trust on which Securities transaction tax is paid • Sale of unlisted securities or shares of a private limited company	10
7	Long-term capital gains other than those covered under S. No. 6	20
8	Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort, winnings from horse race	30
9	Other income	
	• Foreign company	40
	• Firm/Individuals/Others	30

***Notes to withholding tax rates**

- The withholding tax rate as tabulated above is to be increased by surcharge and health and education cess as applicable
- Dividends received from Indian companies are tax-free in the hands of the shareholder. Dividend distribution tax @20.56% is payable by the company
- No withholding tax requirement on long- term capital gain on sale of specified securities by a Foreign Institutional Investor. Such gains are however taxable at the rate of 10%
- Short-term capital gains on transfer of shares of a company or units of an equity-oriented fund are taxable at 15% if they have been subjected to securities transaction tax.
- There is no threshold for payment to non-resident companies up to which no tax is required to be withheld.
- If the PAN of the deductee is not quoted, the rate of WHT will be the rate specified in relevant provisions of the Act, the rates in force, or the rate of 20%, whichever is higher. The government has notified rules that do not mandate quoting of PAN, subject to certain conditions.

VII. TRANSFER PRICING

A. TRANSFER PRICING IN INDIA - BRIEF OVERVIEW

The Indian transfer pricing regulations ("Regulations") stipulate that income arising from 'international transactions' between 'associated enterprises' should be computed having regard to the 'arm's-length price'. Furthermore, any allowance for expenses or interest arising from any international transaction is also to be determined having regard to the arm's-length price. The expressions 'international transactions' and 'associated enterprises' have been defined in the Act.

The Regulations also contain the concept of 'deemed international transaction' whereby a transaction between an enterprise and a third party (whether based in India or overseas) would be subjected to transfer pricing regulations in case there exists a prior agreement in relation to such a transaction between the third party and the associated enterprise of the transacting enterprise or if the terms of such a transaction are determined in substance between the third party and the associated enterprise of the transacting enterprise.

The Regulations also define a certain class of transactions undertaken by a taxpayer with its domestic related parties and whose aggregate value exceeds INR 200 million as specified domestic transactions to which the transfer pricing provisions apply.

The burden of proving the arm's-length character of the transaction is primarily on the taxpayer. Where the transfer pricing officer is of the opinion that the arm's-length price was not applied, the officer may re-compute the taxable income after giving the taxpayer an opportunity to be heard.

B. DETERMINATION OF ARM's LENGTH PRICE

Initially, the Regulations prescribed five methods for computation of arm's-length price namely Comparable Uncontrolled Price Method, Resale Price Method, Cost Plus Method, Profit Split Method and the Transactional Net Margin Method. These are broadly in line with OECD Guidelines. A sixth method, termed as the 'other method', was notified in 2012. Taxpayers are required to adopt the Most Appropriate Method for determining the arm's-length price i.e. method which is best suited to the facts and circumstances of each international transaction or specified domestic transaction, and which provides the most reliable measure of an arms length price in relation to the international transaction or the specified domestic transaction, as the case may be.

C. ADVANCE PRICING AGREEMENT

Taxpayer may enter into an Advance Pricing Agreement (APA). It is an arrangement between the taxpayer and the tax authority wherein the transfer price of goods and services transacted between group entities is determined in advance by the tax authorities and the taxpayers, so as to prevent any dispute arising from such transfer pricing. APAs can be applied to existing, as well as proposed, transactions. The legislation has provisions of roll-back of APAs for four years prior to the first year covered under the APA.

D. SAFE HARBOUR RULES

Safe Harbour provisions have also been incorporated under the Income Tax Act. Safe harbor provisions prescribe minimum return/price (such as a minimum return of 17/18% on total operating costs for a captive software developer) for a specified list of intra-group transactions, which, if followed by the taxpayer, would be accepted by the Indian tax authorities. The rates prescribed under the safe harbor provisions were applicable until FY 2018-19. The same are due for renewal. The transactions covered under the Safe Harbour provisions and the safe harbor margin prescribed are as under:

S. No.	Eligible International transaction	Safe Harbour Margin
1	Software development services	17-18% on operating cost depending on the value of transaction
2	IT enabled services	17-18% on operating cost depending on the value of transaction
3	Knowledge process outsourcing ("KPO")	18-24% on the operating cost depending on the value of transaction and the employee cost to operating cost ratio
4	Advancing of intra-group loans to WOS & loan is in INR	Interest rate of one year marginal cost of funding rate of SBI + 175-625 basis points depending on the credit rating of the AE.
5	Advancing of intra-group loans to WOS & loan is in foreign currency	Interest rate of six month LIBOR of relevant foreign currency (as on 30 September) plus 150-400 basis points depending on the credit rating of the AE
6	Corporate guarantee to WOS	1% on the amount guaranteed in respect of prescribed transactions
7	Contract research and development ("R&D") services relating to software development	24% on operating cost in respect of transactions of prescribed value
8	Contract R&D services relating to pharmaceutical drugs	24% on operating cost in respect of transactions of prescribed value
9	Manufacture and export of core auto components	12% on operating cost
10	Manufacture and export of non-core auto components	8.5% on operating cost
11	Low value adding intra-group services	Mark up of 5%; entire value of transaction including mark up of 5% not to exceed Rs. 10 crore

Note: The rates prescribed under the safe harbor provisions were applicable until FY 2018-19. The same are due for renewal. The rates prescribed give an indication as to what margins the Income tax authorities expects one to make from the specified transactions.

E. SECONDARY ADJUSTMENT

Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the Assessee, the excess money which is available with its AE, if not repatriated to India within the prescribed time, shall be deemed to be an advance made by the Assessee to such AE and the interest on such advance, shall be computed in the prescribed manner.

F. DOCUMENTATION REQUIREMENT

Taxpayers are required to maintain a comprehensive set of prescribed information and documents relating to international transactions and specified domestic transactions that are undertaken between associated enterprises, on an annual basis, within the prescribed timelines (due date of filing the income tax return). Taxpayers being a constituent entity of an international group shall also keep and maintain such information and documents in respect of the international group.

G. REPORT TO BE FURNIHED

Taxpayers are also required to obtain an Accountant's Report from an independent auditor certifying the nature and amount of international transactions. The certificate needs to be filed along with the income tax return.

VIII. TAX INCENTIVES

A. TAX FRAMEWORK FOR START-UPS IN INDIA

a) With a view to providing an impetus to start-ups and to facilitate their growth in the initial phase of their business, a deduction of 100% of the profits and gains derived by an "eligible start-up" from a business involving innovation development, or improvement of products, or processes, or services or a scalable business model with a high potential of employment generation or wealth creation has been provided under the Act. The benefit of 100% deduction of the profits derived from such business can be availed for a period of three consecutive years out of seven years beginning from the year the start-up is incorporated.

b) 'Eligible start-up' is a company or an LLP engaged in the business mentioned above and is incorporated between 1 April 2016 and 1 April 2021; is certified by the Inter-Ministerial Board of Certification as an eligible business; and its total turnover is less than Rs. 250 million.

c) Eligible start-up companies can carry forward losses and set off against income of a year, if they satisfy either of the two conditions

- At least 51% of beneficial shareholders in the year on incurrence of loss continue to hold shares in such start-up in the year of set-off; or
- The same shareholders in the year of incurrence of loss continue to hold their shares in such start-up in the year of set off (irrespective of their percent of holding). Further, only the losses incurred during the period of seven years beginning from the year in which such company was incorporated may be used for set off.

B. TAX INCENTIVE OF CAPITAL EXPENDITURE ON CERTAIN SPECIFIED BUSINESSES

a) Under Section 35AD, specified businesses are allowed 100% deduction in respect of capital expenditure (other than on land or goodwill or financial instrument) in the in which they are incurred. Specified businesses includes, inter-alia, the following businesses:

- Setting up and operating cold chain facilities.
- Setting up and operating warehousing facilities for storage of agriculture produce.
- Setting up and operating an inland container depot, freight station, or warehousing facility for storage of sugar, beekeeping, and honey and beeswax production.
- Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such a network.
- Building and operating a hotel of two-star or above category in India.
- Building and operating a hospital with at least 100 beds.
- Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the government.
- Developing and building specified housing projects under an affordable scheme of the Central/State Government.
- Investing in a new plant or newly installed capacity in an existing plant for production of fertiliser.

- Developing or operating and maintaining or developing, operating and maintaining any infrastructure facility.

b) The said provision intends to give 100% deduction at one go instead of allowing the depreciation over a number of years. The deduction under the said section is subject to fulfilment of the prescribed conditions.

IX. TAX COMPLIANCES

A. DUE DATES FOR FILING OF INCOME TAX RETURNS

Due Dates for filing the Income Tax Returns for different category of taxpayers are as under:

Category of taxpayer	Due Date
Persons required to submit Transfer Pricing Audit Report	30-Nov of the year following the financial year
Companies	30-Sep of the year following the financial year
Other than above	
a) where accounts of the assessee are required to be audited under any law	30-Sep of the year following the financial year
b) where the assessee is a working partner in a firm whose accounts are required to be audited under any law	30-Sep of the year following the financial year
c) in any other case	31-July of the year following the financial year

B. ADVANCE TAX

Advance Tax is required to be paid at the due dates prescribed. It is payable only where Assessed Tax (AT) is greater than Rs. 10,000. The due date for payment of advance tax and the amount of installment tax to be paid by each taxpayer is as under:

Due Dates	All taxpayers
On or before June 15 of the financial year	15% of Assessed Tax
On or before September 15 of the financial year	45% of Assessed Tax
On or before December 15 of the financial year	75% of Assessed Tax
On or before March 15 of the financial year	100% of Assessed Tax

C. TAX AUDIT

Taxpayers are required to get theirs accounts audited and furnish the same along with their return of income if the turnover exceeds the prescribed limit which is as under:

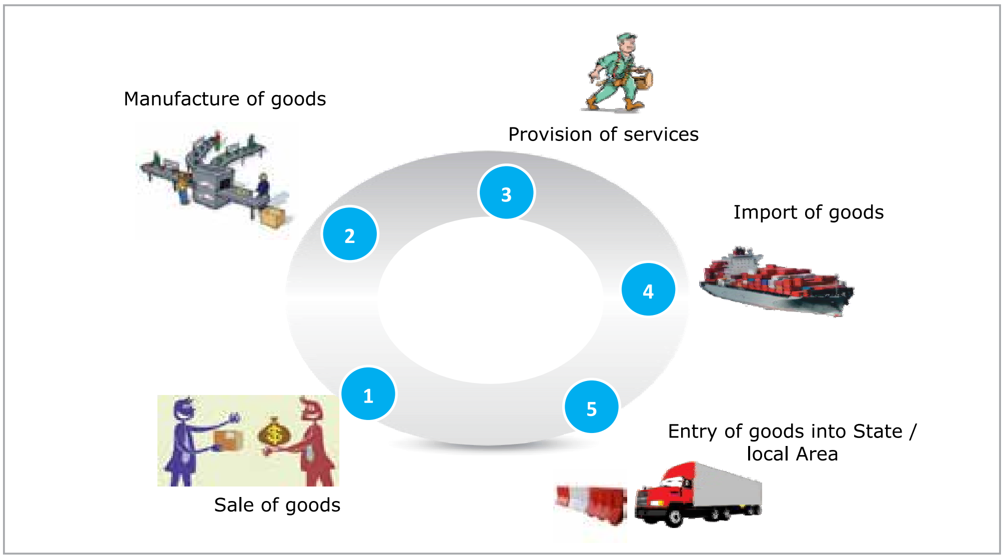
Nature	Turnover
From Business	> Rs. 1 Crore (10 million)
From Profession	> Rs. 50 Lacs (5 million)

Note: Threshold limit of Rs. 2 crore shall be applicable for tax audit, if the assessee declares the Income from business under presumptive taxation.

GOODS AND SERVICES TAX

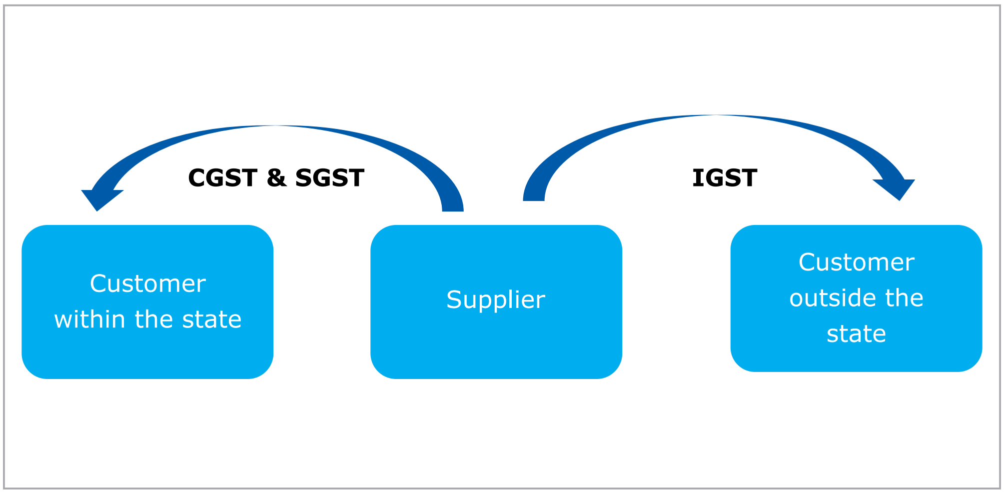
GST – SINGLE TAXABLE EVENT

Goods Service TAx (GST) is the primary indirect tax applicable in India. Introduced in 2017, the tax code combined plethora of taxes in its fold providing a uniform tax code for the whole of India. It follows the value add approach where tax is only levied on the value added by the business. GST is levied on supply of goods and/or services between the persons for a consideration. Tax credit is available for a business for goods and/or services received from its vendors for providing taxable goods/services to its customers.



GST – DESTINATION BASED TAX

Being a federal government structure, the GST is claimed as into three types of taxes, Central GST, State GST and Inter State GST. The type of GST applicable is determined on the basis of place of supply.



While most of the goods and services falls within the structure of GST, the following are still outside the ambit of GST.

OUTSIDE THE AMBIT OF GST

Alcohol for human consumption	Power to tax remains with the state
Five petroleum products–crude oil, diesel, petrol, natural gas and ATF	GST Council to decide the date from which GST will be applicable
Tobacco	Part of GST but power to levy additional excise duty with Central Goverment
Entertainment tax levied by local bodies	GST Council to decide the date from which GST will be applicable

GST RATES

India has a four tier tax rate structure under goods and services tax which is elaborated as below

4 tier rate structure under GST: 5%, 12%, 18% and 28%

GST Rates (CGST+ SGST)/ IGST

- Standard rates of 12 percent and 18 percent
- Peak rate of 28 percent
- Luxury goods taxable at 28
- Essential goods taxable at 5 percent
- Services – 12/18 percent

In addition, for certain goods and services, there is also a special additional tax for compensation of state tax revenues called GST Compensation Cess.

Few items have been exempted from the levy of GST, primarily listed as below:

a. Agricultural produce,

b. Power and electricity,

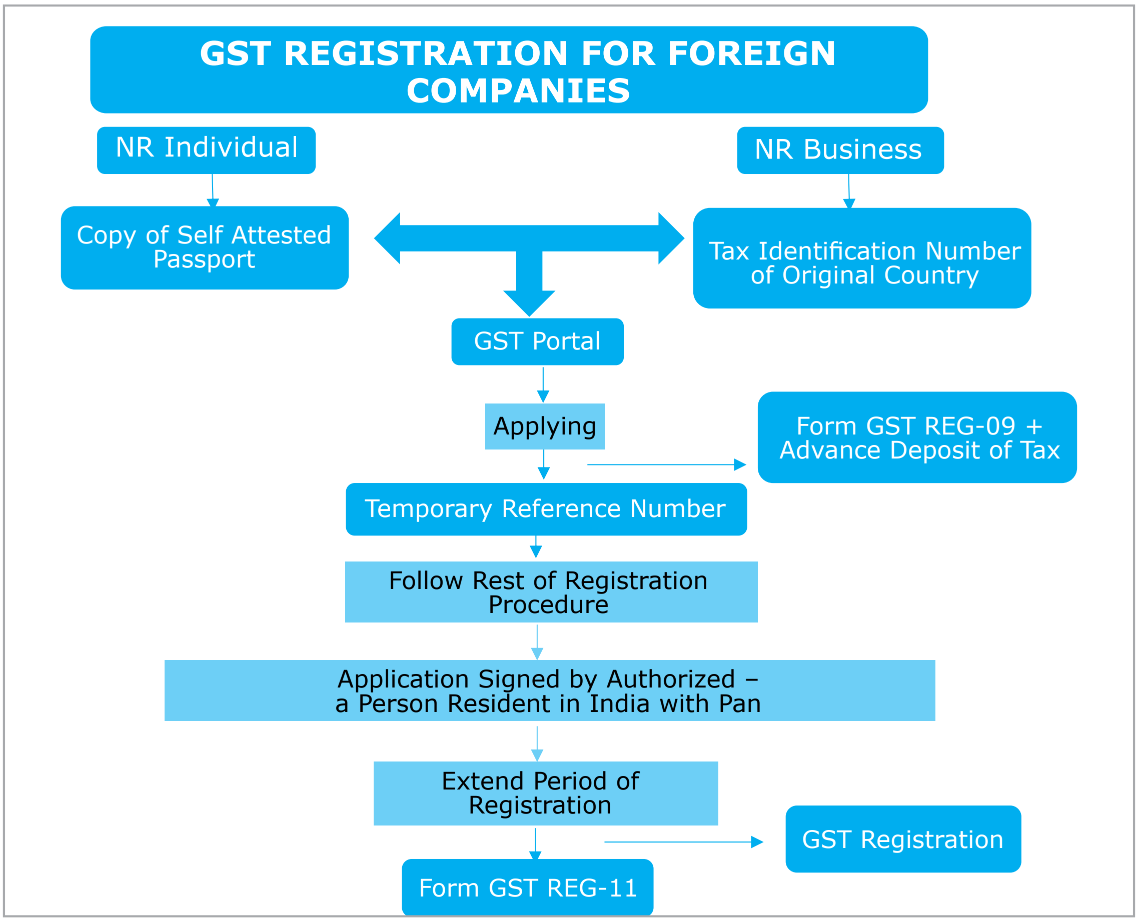
c. Interest,

d. Residential renting.

INPUT TAX CREDIT ELIGIBILITY

Businesses are eligible to take input tax credit paid on supply of goods or services which are **used in the course or furtherance of business** subject to fulfillment of following conditions ;

a. The business should be **registered** under GST
b. The assessee should be in possession of **tax invoices**
c. The assessee should have **received** the goods or services
d. The supplier has **paid** the tax
e. The supplier has **furnished its return** of GST



E-WAY BILL

To check evasion of GST the government has mandated the use of E-way bill for movement of all goods above a value of Rs.50,000/-. Any business transporting such goods is required to intimate the value of goods place of supply, mode of transportation and vehicle registration no of such transport to the tax authorities before transportation the goods.

COMPLIANCES

All business are required to determine their tax liabilties and deposit the tax along with summary returns on a monthly basis, businesses having a turnover of more than INR 20 Million are also required to get their books audited by an external accounting and file an annual return.

IMPORT OF GOODS

Import of goods refers to the bringing goods into India from a place outside India

Process of Import	Duty Structure
Following are the various steps involved in a typical import transaction for bringing goods into Indian territory:- ▪ **Trade Enquiry** ▪ **Procurement of import license** ▪ **Obtaining foreign exchange** ▪ **Placing order/indent** ▪ **Dispatching letter of credit** ▪ **Obtaining necessary documents such as bill of lading, certificate of origin, customer invoice etc.** ▪ **Arrival of Goods** ▪ **Custom clearance and release of goods** **Note: Importers may avail services of Customs House Agents licensed by the Commissioner of Customs, who facilitate the process of customs clearance of the shipments.**	Customs duties are imposed by the central government on imports and exports. Item classification conforms to the International HSN and is taxed based on the Customs Tariff Act, 1975. The basic calculation of customs duty is given below: ▪ **Basic Custom Duty (BCD):** The value of goods is taxed based on the tax rate specified in the tariff schedule. ▪ **Social welfare surcharge:** 10% of the basic tariff (BCD) amount (3% in the case of specific goods). ▪ **IGST** ▪ **GST Compensation Cess,** a levy which will be applicable in addition to the regular GST taxes. GST Cess is levied on supply of certain notified goods – mostly belonging to the luxury and demerit category. ▪ **Anti-dumping Duty** on specified goods imported from specified countries, to protect indigenous industry from injury. ▪ **Customs Handling Fee** of 1% on all imports in addition to the applied customs duty.

EXPORT OF GOODS

Export of goods means taking goods out of India to a place outside India.

Process of Export	Export Incentives
▪ Obtain the Import Export Code (IEC) ▪ Selection of Market by evaluating various factors including export benefits available for few countries under the Foreign Trade Policy ▪ Confirmation of order ▪ Customs Procedures such as obtaining BIN, filing shipping bill, bill of export, etc. ▪ If exporting without payment of GST, furnish Letter of Undertaking ▪ After shipment, submission of documents to the bank ▪ Note: Exporters may avail services of Customs House Agents licensed by the Commissioner of Customs, who facilitate work connected with clearance of cargo from Customs.	▪ Advance Authorization Scheme : Businesses are allowed to import input in the country without having to pay duty payment, if this input is for the production of an export item. ▪ Export Duty Drawback for Customs & GST: The duty or tax paid for inputs/ input services against the exported products is refunded to the exporters. ▪ Merchandise Exports from India Scheme (MEIS) : This scheme applies to the export of certain goods to specific markets. Rewards for exports under MEIS will be payable as a percentage of realized FOB value. ▪ Zero duty EPCG (Export Promotion Capital Goods) Scheme ▪ Duty-Free Import Authorization : This is another benefit the government has introduced by combining the DEEC (Advance License) and DFRC to help exporters get free imports on certain products.

IMPORT AND EXPORT OF SERVICES

Export of goods means taking goods out of India to a place outside India.

Import of Service	Export of Service
▪ It refers to the supply of any service, where- ▪ the supplier of service is located outside India ▪ the recipient of service is located in India; and ▪ the place of supply of service is in India, where Place of supply is determined as per the provisions of IGST Act. ▪ IGST is applicable on the import of service payable under reverse charge by the importer. ▪ The GST rate depends upon the nature of the service procured from outside India. Generally the GST rate on services is 12% / 18%.	▪ It refers to the supply of any service, where- ▪ the supplier of service is located in India; ▪ the recipient of service is located outside India; ▪ the place of supply of service is outside India; ▪ the payment for such service has been received by the supplier of service in convertible foreign exchange; and ▪ the supplier of service and the recipient of service are not merely establishments of same person, where Place of supply is determined as per the provisions of IGST Act. ▪ IGST is applicable on the export of service. If exporting without payment of GST, then Letter of Undertaking is required to be furnished. ▪ The duty or tax paid for inputs/input services against the export of services is refunded to the exporters.

OTHER RELEVANT LAWS FOR BUSINESS AND INDUSTRY

OTHER RELEVANT LAWS FOR BUSINESS AND INDUSTRY

INDIAN CONTRACT ACT, 1872 (ICA)

The ICA governs the formation, implementation and conclusion of a contract. It also provides remedies for breach of contract. ICA defines contract as an agreement enforceable by law. To be enforceable by law, a contract must contain the following essential elements:

Free con-sent of the parties	Parties must be competent to contract	Contract should be for a lawful consideration	Contract must be with a lawful object	Contract should not be expressly declared by the ICA to be void

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

India being a signatory to the GATT (General Agreement on Tariffs and Trade) and Trade Related Aspects of TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement, has complied with the obligations therein by enacting necessary statutes governing the following:

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

LABOUR LAWS

The Code on Wages Bill, 2019, recently passed by the Government aims to transform the old and obsolete labour laws into more accountable and transparent ones which is need of the hour. It will subsume four labour laws -- Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act and Equal Remuneration Act. The labour ministry has decided to amalgamate 44 labour laws into four codes — on wages, industrial relations, social security, and safety, health and working conditions.

- The code ensures minimum wages along with timely payment of wages to all employees and workers.
- The bill will ensure that employees getting a monthly salary are paid by the 7th of the following month. Those working on a weekly basis will be paid on the last day of the week and daily wagers should get them on the same day.
- The Code on Wages seeks to universalise the provisions of minimum wages and timely payment of wages, which will be computed based on minimum living conditions.

This is another step to create better business environment.

7. CORE STRENGTHS OF VJA

- Goods and Services Tax (GST)
- Corporate Laws
- Foreign Exchange Management Act (FEMA)
- Accounting and Compliance
- Financial services advisory
- Legal Services
- Briefing on Doing Business in India
- Identification of investment opportunities in different States of India
- Connecting business and due diligence
- Assist in entry strategies to overseas investors and handholding support
- Taxation-Domestic & International
- Transfer pricing and cross border transactions

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