

**DOING
BUSINESS
IN**

INDIA



HLBIndia

*doing business in
India*

foreword

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April 2005

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EXPORT ORIENTED UNITS

general information

Preface

This guide is designed to provide to an investor, particularly a foreign investor, fundamental information on the present business and economic environment in India. The information covers areas like taxation, accounting, finance, employment and labour, besides other commercial and legal implications influencing business decisions in the country's changing economic scenario.

The information given is not exhaustive and is only meant to be a guide. Unless otherwise indicated, details are based on conditions existing at December 2004. This guide does not purport to be an offer, invitation or solicitation of any kind.

General Information

Welcome to an insight of an enigma that is India. The seventh largest country in the world, the second largest population in the world, the country having the largest English speaking population after USA and UK, is a land of immense opportunities.

India can be explained to the person who does not know it as a land, which will never cease to amaze. It is a very old adage in India that "this can happen only in India".

India is a land of diversity with a congruence of many disparate cultures that continue to coexist in balanced harmony. It is a land that enjoys the advantages of a civilization, which spans a period of more than 5000 years. It is a vibrant country that symbolizes continuity in change and change in continuity.

The country is a land of contrasts where tradition can coexist with development and where hope manages to flourish in despair.

The present economic and tourism scenario is aptly described in the words "INCREDIBLE INDIA".

A Brief Overview of India

Longitude	68'7 to 97'25
Latitude	8'4 to 37'6 North
Land mass details	Total land area 3,287,590 sq. kms. Coastline 7516 kms. Land frontier 15,200 kms.
Boundaries	North – China, Nepal, Tibet, Bhutan and the mountain range of the Himalayas East – Myanmar, Bangladesh and the Bay of Bengal. South – The Indian Ocean and Sri Lanka North West – Pakistan, Afghanistan and the Arabian Sea
Climate	Winter Season from October to February Summer Season from March – May Monsoon from June to September.

Constitution and Government

The Indian federation is the world's largest democracy with strong foundations having a single citizenship and a single but extremely active judiciary and a parliamentary form of democracy.

The three main arms of the India Governance Structure are:

1. The Executive:

The President of India is the Constitutional head of the Executive of the Union. Under his directions the cabinet of ministers headed by the Prime Minister of the country is responsible for the day-to-day running of the country. Though the President does not interfere with the working of the Prime Minister and his cabinet he is an important guiding force for the country. The Prime Minister and his cabinet are answerable to the Parliament of India, which is formed of the democratically elected representatives.

2. The Legislature:

The legislature is known as the parliament comprised of the Lok Sabha and the Rajya Sabha. The Lok Sabha has term of five years or it can be dissolved by the President. The Lok Sabha has 543 members elected by universal adult suffrage (right to vote) from all parts of India. The Rajya Sabha has 250 members elected by the representatives of state legislatures and some co-opted by the President of India on the basis of their contribution to the society.

3. Local Governments:

Many of the state legislatures are bicameral and have a similar structure to the main parliament. The state governments have a similar authority structure to the national government and enjoy similar powers..

Economy

The economy of India is on the fast track of progress at all levels with a current position as the fourth largest economy in the World. Prime sectors like agriculture, automobile, power, petrochemical, steel and IT are progressing at a rapid rate. Many companies have international level operations. The gross domestic product (GDP) for the year ended March 2004 registered an all time high growth rate of 8.4. To maintain a minimum growth rate of 7-8 per cent a year with due consideration to promote investment, to accelerate fiscal consolidation, to ensure higher fiscal devolution and to focus on agriculture, manufacturing and infrastructure are mandated under The National Common Minimum Programme. With a view to promote education and to provide universal access to education, the Government has imposed a 2% education cess on all direct and indirect taxes for the last two years.

According to the Central Statistical Organisation, the growth rate in the current year (April-March) is estimated to be 6.9 per cent with the manufacturing sector expected to grow at 8.9 per cent. All the engines of the economy are currently running at nearly full speed.

The Inflation rate is currently around 5 to 6 percent. It touched a high of 8.7 percent in August 2004.

Economic Arrangements

Economic arrangements are very well established in the Government machinery through formation of planning commission, five year plans and annual budgetary system. An Annual central Budget for the next year (April – March) is presented before members of the Parliament by the ruling party of the Government in February each year.

Estimates of receipts, expenditure, capital outlay and allocation of funds are directed through budget mechanism. All tax law proposals and rates for central coffers are directed through budgetary provisions. Sectors of paramount priority and national importance are supported through budget allocations. Financial progress is closely monitored and measured by the Ministry of Finance. An Annual economic survey report is presented prior to the presentation of the budget and necessary adjustments are then routed through the budgetary provisions.

The principles and provisions of revenue sharing between Central and State Governments are well defined in the Constitution. Additional financial support to the States is provided by the central government on need basis.

Legal System

The legal system in India is well established. The Supreme Court of India is the apex court of the Nation headed by the Chief Justice of India. All States have a High Court as an apex court at State level. In addition, there are district courts, metropolitan courts, city civil courts, tribunals and criminal courts functioning in the States. Judgments of lower level courts can be petitioned in the higher level courts. The entire judiciary system is independent of the India Governance Structure and operates as per provisions laid down in the Constitution of India. The legal system of India is based on the English Law.

Population

India has the second largest population in the world of about 1065 million people. It is a cultural mix of various races, religions, dialects, cultures, likes, dislikes and all the possible variations that one can expect.

India can be described as a young country with almost 64% of its population lying between the age group of 15-64 years. About 28% of the Indian population lives in urban areas. The average life expectancy is around 61 years. More than half of the Indian population is educated and this figure is rapidly increasing. If we consider the urban population almost 74% of the population is educated.

India can boast of the largest pool of skilled and unskilled manpower, which is very versatile and adaptive. It has also got probably the largest pool of scientific qualified and technologically adept manpower along with globally recognized innovators, managers, scientists and entrepreneurs in many fields. There also exists skilled and unskilled labour, which is not only cost effective and efficient but also capable of moulding itself to any requirements. Though India does not have much labour trouble, it does have well developed labour unions that look after worker rights.

The official language of the country is Hindi, which is spoken by almost 41% of the population. However, English with various degrees of fluency is spoken and understood throughout the country. There are 18 recognized languages in India.

Travel to India

International air connections are available from New Delhi, Mumbai, Chennai, Thiruvananthapuram, Bangalore, Hyderabad, Ahmedabad, Kochi, Kozhikode and Kolkata. Further, a number of international chartered air connections are also available from Goa. Most international airlines have regular flights into the country, with Air India (the national international carrier) offering flight connections to various international destinations.

Visa Regulations

Requirement of Visa

Foreigners desirous of visiting India can obtain a visa from the Indian Mission in the country of their residence. They should possess a valid National Passport - except in the case of nationals of Bhutan and Nepal, who may carry only suitable means of identification.

The Consular Passport and Visa Division of the Ministry of External Affairs is responsible for issuance of Indian visas to foreign nationals for visits for various purposes. This facility is granted through various Indian missions abroad.

The Indian High Commission / Embassy usually issues the visas in the applicant's country of residence with supporting documents.

The following types of visas are normally granted for entry to India by foreigners.

Temporary Visas

Visitors to India need visas to enter the country unless they are Indian citizens. Nonresident Indians holding citizenship of another country are also required to obtain visas before arriving in India unless they hold a Person of Indian Origin (PIO) card issued by the Indian government. Visas must be obtained from the Indian embassy or consulate in the applicant's home country. Special permits are required for visiting the Andaman and Nicobar Islands, Bhutan, Lakshadweep, remote Northeastern states and Sikkim. Tourist visas are valid for one to six months, generally beginning on the date the visa was issued and not on the date of entry into India. Tourist visas are generally multiple-entry visas, however, this option must be specifically requested at the time of application.

Business Visa

This visa is required by persons visiting India on business. It is necessary to provide a letter from the applicant's overseas employer stating the exact purpose of the visit, and the expected duration with the application. A letter of invitation from the Indian Company should also be provided. Business visas are normally Multiple Entry and may be granted for up to two years. Business Visas are issued for visits of more than a 180-days with multiple entries. Although a Business visa is usually valid for a period of up to five years, there is no hard and fast rule for the same. Business visas valid for up to ten years with multiple entries is available to foreign businessmen who have set up or intend to set up joint ventures having governmental approval in India.

Employment Visa (Work Permits)

A Multiple Entry employment visa is granted on a case by case basis to foreign nationals wishing to take up an employment in India. Indian companies are allowed to engage the services of foreign nationals without any approval. An employment visa must be obtained from the Indian Consulate in the country of residence of the applicant, prior to departure for India. Normally the following main papers are required to be filed with the application for employment visa:

- A letter of secondment from the overseas company and an employment letter from the Indian company
- Expected duration of the employment.

Entry Visa / X-Visa

This visa is granted to those persons who wish to visit India for long term or permanent residence but do not belong to any of the above categories. Foreign nationals coming to India on an employment visa may obtain an X-visa for their spouses before coming to India. If such a spouse decides to take up any employment in India, then the spouse will be required to go back to the port of origination and obtain the requisite employment visa.

According to the rules currently in force, a change of category of visa is not permitted. Any breach in the purpose / category of the visa granted to a foreign national is illegal and can result in his / her deportation.

The foreign national can however apply for an extension of visa duration. The application is to be made to the Ministry of Home Affairs through the concerned FRRO/Office of the Senior Superintendent of Police (SSP) along with required documents for getting visa extension.

Spouse Work Rights

Generally spouses of foreign nationals arrive on an X-visa, which does not allow any employment or business in India. In cases where the spouse wants to work in India, then an appropriate visa (that is, a business or employment visa) is required. Once the spouse reaches India with an X-visa, and decides to take up any employment, then the spouse would need to go back to the port of origination and obtain the requisite employment visa.

Registration Requirements

Foreign national entering India on for the first time on a visa (whether tourist, business or any other) which is valid for a period of more than 180 days, would be required to register themselves with the appropriate Foreigner's Regional Registration Office ("FRRO") within fourteen (14) days of his/her arrival in India. Such a visa holder would be required to register with the relevant FRRO notwithstanding the fact that the visa holder intends to remain in India for a period that is less than the duration of the visa in question. Therefore, the implication of such a visa is that the foreign national holding the visa would be deemed to have the intention of remaining in India for the entire duration of the visa.

In case foreign nationals are required to move around the country to comply with the demands of their jobs/profession. Under such circumstances, the foreign national would be required to obtain registration with the "relevant FRRO", i.e., either in the first port of entry or where the residential address has been provided.

Conversion / Extension of Visa

In the event that a foreign national holding a visa valid for a period of less than one year desires to convert it into a visa valid for a period of more than one year, then he/she would be required to approach the Ministry of Home Affairs for conversion/extension of the said visa.

Drivers Permit

Foreign nationals are not allowed to drive in India using their home country drivers' licenses. Foreign nationals must obtain international drivers' licenses in their home countries. International drivers' licenses are generally valid for six months. To obtain an Indian driver's license, individuals must apply to the Regional Transport Authority, which issues learners' permits. This enables the individual to drive if accompanied by an adult who has a valid Indian driver's license. One month after the learner's permit is issued, a driving test and a verbal examination of the local driving laws must be taken. On successful completion of the examinations, the Regional Transport Authority issues a driver's license.

Employment Regulations

There are various Acts which regulate labour and employment in India. Some of the Acts are:

- Apprentices Act, 1961
- Beedi Workers Welfare Fund Act, 1976
- Bonded Labour System (Abolition) Act, 1976
- Building and Other Construction Workers (Regulation of Employment..... Service) Act, 1996
- Child Labour (Prohibition & Regulation) Act, 1986
- Children (Pledging of Labour) Act, 1933
- Maternity Benefit Act, 1961
- Minimum Wages Act, 1948
- National Commission for Safai Karamcharis Act, 1993
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Payment of Wages Act, 1936
- Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
- Cine-workers Welfare Fund Act, 1981
- Contract Labour (Regulation & Abolition) Act, 1970
- Dangerous Machines (Regulation) Act, 1983
- Dock Workers (Regulation of Employment) Act, 1948
- Dock Workers (Safety, Health and Welfare) Act, 1986
- Employees Provident Fund & Miscellaneous Provisions Act, 1952
- Employees' State Insurance Act, 1948
- Employers' Liability Act, 1938
- Equal Remuneration Act, 1976
- Factories Act, 1948
- Industrial Disputes Act, 1947
- Industrial Employment (Standing Orders) Act, 1946
- Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979

- Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Est.s) Act, 1988
- Pensions Act, 1871
- Sales Promotion Employees (Conditions of Service) Act, 1976
- Seamen's Provident Fund Act, 1966
- Trade Union Act, 1926
- Weekly Holidays Act, 1948
- Workmen's Compensation Act, 1923

Banking & Finance

The banking system in India is well developed to meet the requirements of trade, commerce and industry. The country has a vast representation of banks with a huge coverage of branches all over India of Indian and foreign banks also. The banking sector is controlled by the Central Bank i.e. The Reserve Bank of India which though maintaining a watchful eye on the banking sector does not interfere with the day-to-day working of the banks.

General lending policies

Broadly, Banks and Financial Institutions in India grant loans for capital expenditure for setting up a new project or for expansion and diversification programmes of existing businesses. The finance is available for a fixed term ranging from one to seven years depending upon the project requirements. The rate of interest varies from seven to twelve percent depending upon the merits of each case.

The Banks also grant working capital facilities against current assets of business entities. Non-fund based facilities in terms of letter of credit for procurement of raw materials and issuing payment and performance guarantees of business entities are also issued by the Banks.

There are industry specific lending institutions also for power generation, irrigation, railways, roads, shipping, hotels and tourism, films production, housing construction, etc. In addition, special financial institutions for the promotion of small industries, agriculture, etc provide soft finance to eligible business entities

Industry

India is one of the leading developing nations with a strong presence in all areas of business and commerce. The major growth drivers in the future where immense growth is possible are:

- IT Enabled Services
- Software Development
- Infrastructure and Allied Industries
- Transport
- Hospitality
- Tourism Development
- Insurance
- Telecom
- Back office operations
- Bio-technology, Fast Moving Health Goods (FMHG) and Pharmaceuticals
- Media & Entertainment

- Fast Moving Consumer Goods (FMCG) and Luxury Goods
- Manufacturing Hubs
- Retail Marketing and Sales
- Agriculture
- Engineering and capital goods
- Textiles

The areas stated above are considered as the basis on which India can convert itself into economic superpower. The potential of these industries is unlimited due to the large Indian market and also due to India's immense influence in the South Asian economy.

Currency

The official currency of India is the Indian rupee commonly known as the INR. The rupee is divided into 100 units, which are known as the paisa. The rupee is fully convertible on the trade front under the liberalized exchange rate management system ("LERMS). All transactions under the LERMS will take place at market-determined rates. The rupee is fully convertible on current account. On the capital account also the rupee is substantially free with residents permitted to invest abroad subject to completion of certain formalities and non-residents permitted to invest in most sectors except few sectors like defense etc. In the international market the rupee is pegged to the US Dollar.

Domestic Market

India can boast of being the largest growing market in the world due to its fast growing middle class with increasing standards of living and growing aspirations. The middle class has a high saving and spending potential making India a large market for a variety of goods.

Natural Resources

India has abundant reserves of coal, iron ore, manganese, mica, bauxite, granite, titanium, chromites, limestone, forests and natural products

Agriculture

India occupies a leading position in agriculture in respect of items such as tea, coffee, cotton and sugar. Use of modern methods of agriculture like the use of high quality seeds and better irrigation facilities has helped agricultural production to grow by leaps and bounds. The Indian government has also given many incentives to Indian agriculturists in the form of tax incentives to encourage them to obtain even better returns. Agriculture accounts for nearly 24% of the total GDP and supports almost 60% of the population directly or indirectly.

investment factors

With globalization and the widening of the world economy there is an immense potential for investment in India due to the following reasons:

- India is the fourth largest economy in the world.
- Substantially a free market economy with government recognition of the need for further reforms
- Availability of one of the largest pool of cost effective, skilled and qualified scientific and technical manpower.
- Large availability of educated manpower of around 360 million, which is more than the population of many countries.
- Vibrant capital markets and strong financial sectors along with a large and penetrative network of banks and financial institutions.
- Latest state of the art infrastructure facilities with governmental recognition of the need for greater improvement.
- Growing middle class with increasing aspirations.
- A vast untapped market waiting to be tapped. Approximately 1% of the Indian population would mean 10 million consumers, which is more than the combined population of Singapore and Hong Kong.
- Recognized educational institutions, which are the providers of many top industry professionals in the world and also a source of manpower for potential investors.
- India has a high savings rate leading to greater capital flow and therefore higher investment.
- Indian Governments' recognition about fiscal discipline and awareness of the need for prudent financial policies and curbing of subsidies over the long run.

Capital Markets

India has by the virtue of its size probably one of the largest investor bases in the world. The Bombay Stock exchange is one of the oldest stock exchanges in Asia. There are 23 recognized stock exchanges in India. However predominant business is done at the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). All the stock exchanges have screen based computerized trading with satellite uplinking facilities from any part in India. The exchanges now have trading of all securities in electronic units known as dematerialized shares.

The BSE and the NSE have also introduced derivative products like Futures and Options with a view of bringing the Indian stock markets in tune with international markets and practices.

Mutual funds

In India, Mutual Funds are governed by the Securities and Exchange Board of India (SEBI) regulations. Foreign Participation in Mutual Funds and Asset Management Companies are governed by SEBI. All companies who wish to provide services of a mutual fund are also required to be members of Association of Mutual Funds of India.

Foreign Exchange Market

The money market in India is structured and well developed. The major players in the money market are the Authorized dealers, Nationalized banks (mainly State Bank Of India) and foreign banks that work under the active and regulatory control of the Reserve Bank of India.

With the economic liberalization, the Govt. of India has opened the doors for attracting foreign exchange to the Country. The provisions of Foreign Exchange Management Act, govern foreign exchange in India. The total foreign exchange reserves in India have already crossed 140 billion US dollar as of now.

Foreign Exchange

The Reserve Bank of India (RBI) is the governing authority for all matters relating to foreign exchange management and control. RBI manage through stipulations in the Foreign Exchange Management Act (FEMA) to supervise, control and flourish foreign funds.

Venture Capital Funds and Companies

Venture Capital funding is also considered as an option for funding business. It has gained momentum after the Information Technology boom where it gained popularity as a means of funding. In India, these funds are governed by SEBI guidelines. There are a number of funds, which are currently operational in India and involved in funding start up ventures. Many of the venture funds are involved in providing mezzanine or bridge financing and are better known as private equity players. The venture capital companies also provide entrepreneurs with incubator facilities with innovative ideas.

The Indian Venture Capital Agency (IVCA) is the nodal center for all venture capital activities in the country. The association was set up in 1992 and over the last few years it has developed an impressive database.

types of business organisations

Different Entities in India

The principal forms for starting / commencing business in India are as follows:

- Limited Liability Company – Public or Private Company
- Partnership Firms
- Association of Persons
- Branches of Foreign Enterprises
- Joint Ventures
- Others

Other forms include Liaison Offices of foreign companies and trusts or incorporating a Temporary Project / Site Office in India. Foreign Investors may adopt any recognized form of business entity. The limited liability company possesses a separate legal entity distinct from that of its proprietors. For income tax purposes, however partnership firms and association of persons are also recognized as separate entities.

The limited liability company is the most widely used form for a business enterprise and is also the most suitable form of starting / commencing business for a foreign direct investor.

Company Law in India

The basic law, which would be of interest to a foreign investor or businessman, is the Companies Act, 1956. The Act is substantially based on the corresponding English Companies Act of 1948, with local variations.

The Companies Act, 1956 regulates the formation, management and the dissolution of limited companies, which is administered by the Registrar of Companies. A limited liability company may be either public, in which case its name ends with the word 'Limited' or, private where its name ends with the words 'Private Limited'. The Companies Act, 1956 applies to all trading or other corporations, which are incorporated under the Act or any of the earlier Companies Act, but it does not apply to universities, co-operative societies, unincorporated trading, scientific and other societies.

Different Types of Companies

Broadly speaking companies can be either public companies or private limited companies.

They can be limited by share capital or guarantee. In addition there can also be foreign companies operating in India

1. PUBLIC COMPANY:

A public company is defined as a company, which is not a private company, has a minimum paid up capital of Rs.0.5 million or is a private company which is a subsidiary of a company which is not a private company.

The public company registered under the Companies Act cannot have less than seven members. There is no restriction with regard to the maximum number who can acquire the shares or debentures of the company. The shares and debentures may be quoted in stock exchanges. They are freely transferable. Further, any private company, which is a subsidiary of a public company, is treated as a public company and many of the privileges, which are otherwise available to a private company, are not available to such a company.

2. PRIVATE LIMITED COMPANY:

A private company means a company having a minimum paid up capital of Rs. 0.1 million or such higher paid up capital as may be prescribed, and additionally the following provided by its articles:

- (i) Restricts the right to transfer its shares;
- (ii) Limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased;
- (iii) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and
- (iv) Prohibits any invitation to or acceptance of deposits from persons other than its members, directors or their relatives.

3. FOREIGN COMPANY:

A foreign company is defined as a company, which is incorporated outside India and has established a place of business in India. Such a company should be in a position to prove that it has more or less a permanent location in India from which it regularly conducts business. At least some degree of regularity in conduct of business should be established by such a company to justify it as a foreign company. Within thirty days of establishment of such office or branch, the foreign company is required to submit documents to the Registrar of Companies (ROC) under whose jurisdiction it comes. In addition, alterations and changes in these documents are also required to be notified to the ROC within thirty days of such change. The accounts of all the operations from Indian establishment are also to be submitted to ROC.

Capital of a Limited Liability Company

The minimum paid-up capital of a Public Company must be at least Rs. 0.5 million and that of a Private Company must be at least Rs. 0.1 million. The memorandum of association must state the amount of the company's initial authorised share capital (the amount of capital available for issue), which can be any amount that the promoters require. Of the authorised share capital not all needs to be paid immediately. Shares may be partly paid. The authorised share capital may be increased by a simple resolution passed at the company's general meeting, if the articles of association so provide.

A limited company can issue only two kinds of shares, equity shares and preference shares, provided they form part of the authorised share capital of the company. Every member holding equity shares has a right to vote in respect of the capital held on every resolution placed before the company. Every member holding a preference share has a preferential right to be paid a fixed amount or rate of dividend; a preferential right, on winding up or repayment of capital, to be repaid the amount of capital paid up on his shares; right to vote only on resolutions which directly affect the rights attached to preference shares. Under the Companies Act, 1956, consideration for subscriptions to shares may be in forms other than cash such as goodwill, know-how and supply of plant and machinery. While this option is freely available to Indian investors, foreign investors must normally contribute cash unless a specific approval from the Government is obtained.

Various options as to Capital

A company can opt for various options pertaining to its Share Capital

- Issue of further Capital
- Alteration of Share Capital
- Reduction of Share Capital
- Diminution of Share Capital
- Issue of Shares at par, at discount or at premium
- Issue of Sweat Equity Shares
- Buy back of Own Shares

A company, only in accordance with guidelines issued by SEBI, can make an offer of shares or other securities to the public. All offer documents for public issue of shares or other securities by companies intending to be listed on recognized stock exchanges or which are already listed, are required to be filed with SEBI and comply with directions issued by SEBI in this regard. All Rights offer documents are also to be filed with SEBI. Public offer and Rights offer documents must comply with disclosure norms laid down by SEBI. Shares are now permitted to be held in an electronic form through the depository mode.

Procedure for Formation of a Company:

The procedure for setting up a limited liability company whether public or private, which is normally entrusted to professional advisors, can be summarized as follows:

- At least two promoter subscribers in case of a private company and at least seven in the case of a public company must apply for availability of a suitable name.
- The proposed name must be approved by the Registrar of Companies.

- Two principal constitution documents of the company must be drawn up:
 - Memorandum of Association, which states the company's name, the situation of its legal address or registered office (which must be in India), the objects of the company, its limited liability status and the amount of its authorized capital.
 - Articles of Association, which regulates the company's internal management and the rights of its members among themselves.
- The promoter subscribers must sign two printed copies of the memorandum and the articles of association, in presence of a witness.
- In the case of a public company, a declaration by persons agreeing to act as directors must be obtained.
- The two signed copies of the memorandum and articles of association, one of which is duly stamped, the declaration (if required) and other specified documents, along with the registration fees prescribed, are presented to the Registrar of Companies for registration. On issue of its certificate of incorporation by the Registrar of Companies, the company comes legally into existence from that date.
- A private company may commence business as soon as a certificate of incorporation is issued. A public company, however, may not start operations until the Registrar of Companies, on completion of further formalities, has issued a certificate of entitlement to commence business. At any point of time, a private company must have at least two shareholders and a public company at least seven.

Cost of Forming a Company

For the formation of a company other than the usual costs involved in research and development, documentation, stamp duty etc., costs have to be incurred for registration fees with the ROC. The amount of duty and the registration fees depends on the authorized capital of the company.

Management of a Limited Liability Company

The management of a company is vested in the board of directors, appointed by the shareholders, all of whom must be individuals. Directors need not be resident and can also be foreign nationals.

The minimum number of directors in a public company is 3 and in a private company 2. As to the maximum number of directors, if a public company proposes to increase the number of its directors by more than 12, approval of the Central Government is required.

The subscribers to the memorandum are deemed to be the first directors of the company. The shareholders in a General Body Meeting normally appoint subsequent directors.

The Board may appoint additional directors when the need arises, if the articles so permit. Such directors however, hold office up to the date of the next Annual General Meeting (AGM) of the company. The appointment of such directors can be regularized in the AGM.

In the case of a public company up to one-third of the board may be comprised of permanent

directors. Of the non-permanent directors one-third must retire by rotation at every AGM although a retiring director is eligible for reappointment.

Financial stake holders like Development Banks, Financial Institutions and working capital granting commercial banks can also appoint their representatives as nominee directors. The Act provides for protection of such directors against many provisions applicable to the ordinary directors. Provisions like retirement by rotation, holding of certain minimum shares etc are not applicable to such directors.

A company may appoint one or more managing or full time directors. The appointment and remuneration of a managing or full time director of a public company is required to be approved by the shareholders in their a General Body Meeting. Approval of the Government is not necessary if the appointee meets specified conditions and the remuneration is within the limits prescribed under the Companies Act.

Directors' remuneration is normally determined by the articles of association or by the shareholders at a General Body Meeting. A provision is made for minimum remuneration based upon the effective capital of the company, in case there is no profit or profit is inadequate. Unless the Central Government approves otherwise, the remuneration paid to the managing and full time directors of a public company may not exceed 5% of net profits if there is one such director, and 10% if there are more than one such director.

The articles of a private limited company can give power to its board of directors to fix the remuneration of a managing or full time director.

Meetings and Votes in a Limited Liability Company

An Annual General Meeting must be held in each calendar year, not more than fifteen months after the preceding meeting, and within six months from close of each accounting period. The Annual General Meeting is required to be held during business hours on a working day at a place within the city in which the registered office of the company is situated. Shareholders are entitled to appoint proxies to attend meetings and vote on their behalf.

Ordinary resolutions require a simple majority of the votes that are cast by those attending the meeting (in person or by proxy). A company's articles of association can be amended only by a 'Special Resolution' which is one passed by a 75% or greater majority of the votes cast at a general meeting of which due notice has been given. Usually, each shareholder has one vote by a show of hands. On a poll, voting rights are in proportion to each shareholder's share of the paid up capital.

A formal meeting of the Board of Directors is required to be held once every three months. These meetings need not be necessarily held in a place within the city of the registered office of the company, and can be held anywhere even outside India.

Publication of Information by a Limited Liability Company

In addition to its constitution documents, every limited company must file its annual financial statements with the Registrar of Companies and an 'Annual Return' containing updated particulars of its shareholders, directors and share capital. Information filed with the Registrar of Companies is available to the public for inspection on payment of a nominal fee.

Public companies listed on the stock exchanges are required to publish their quarterly results in a local and National newspaper.

A limited company must state its name and registered office address in legible characters in all its business letters, bill heads, notices and other official publications; and its name on all communications including invoices, receipts, cheques and endorsements.

Corporate Governance

The Government of India has introduced good Corporate Governance (CG) leading to more transparent, ethical and fair business practices to be adopted by corporate entities at large. Certain important features of CG are as under:

The Report of the Board of Directors shall now include a Directors' Responsibility Statement confirming (i) maintenance of adequate accounting records for safeguarding the assets of the company and for preventing and detecting frauds and other irregularities (ii) judgments and estimates made in a reasonable and prudent manner to ensure true and fair view of the accounts (iii) preparation of accounts by following the applicable accounting standards (iv) consistent application of the accounting policies selected, and (v) preparation of financial statements on a going concern basis.

It is further provided that every public company having paid-up capital of Rs. Fifty million or more shall constitute a committee of the Board known as the Audit Committee. Such a committee shall have full access to the information contained in the records of the company and shall also have powers to seek external professional advice as expedient. All the recommendations of the Committee relating to financial management and audit reporting shall be binding on the Board. Recommendations not acceptable to the Board are to be communicated to the Shareholders with reasons thereof.

The Companies Act now debars a person from acting as a Director of a company if there is a default in filing Annual Return / Accounts or repayment of deposits / interest or dividends.

Apart from the above requirements, all listed companies are now required to publish their quarterly and half yearly results with a limited review by the Auditors. Such accounts shall be prepared in compliance with the applicable accounting standards and shall also disclose segmental results. With the annual report, all listed companies have to publish audited consolidated accounts also.

Listed companies are also required to include a report on CG in their annual report covering certain vital information. Some of the important are listed below:

- A brief statement on company's philosophy on code of governance
- Composition and category of directors, their attendance at the Board Meeting etc
- Audit committee, Remuneration committee and Shareholders committee details
- Certain important disclosure by the Board
- Means of communication with the company
- General shareholders information

Accounting Systems and Standards

India has a well-established system of accounting. All corporate entities follow the mercantile (accrual) system for recording their accounting transactions. The Institute of Chartered Accountants of India, the Accounting regulatory authority, has prescribed 29 Accounting Standards and 32 Auditing and Assurance Standards till date providing comprehensive guidelines. These are mandatorily applicable mainly to listed companies and some of the accounting standards are applicable to private limited companies also.

India is also a member of International Accounting Standards Board and whenever the international body prescribes new accounting standards, these are adopted in India also with modifications to suit the Indian environment and laws.

taxation

The Income Tax Act, 1961 (IT Act) is the operative (main) Act in India providing the machinery and methodology for the determination, computation and payment of income tax. The Act is substantiated by the Income Tax Rules providing methodology, rules and forms for payment of taxes. The Central Board of Direct Taxes (CBDT) is the final Authority and governs the entire mechanism of direct taxes in India. Indirect taxes are handled either by the Central or State Governments as per policies defined in the Constitution of India. Customs and Excise Duty being the prime drivers of nation's growth are under direct control of the Central Government.

General Structure

The general structure of taxes in India is comprised of two parts:

Direct Taxes	Indirect Taxes
Income Tax	Excise Duty
Wealth Tax	Value Added Tax
Expenditure Tax	Customs Duty
	Sales Tax
	Stamp Duty
	Service Tax
	Octroi Duty

A. DIRECT TAXES

INCOME TAX

Terminology

a) Assessment

The word assessment is defined to include reassessment. In general context the word assessment means computation of tax and procedure for imposing tax liability. An assessment, therefore, comprises of two stages:

- Computation of total income
- Determination of tax payable thereon

b) Assessment year

An assessment year is the year in which the income of the previous year is to be assessed and brought to tax and means the period of twelve months commencing on the 1st day of April every year.

c) Previous Year

The financial year immediately preceding the assessment year, in which the income is earned and brought to tax, is the previous year.

d) Assessee

An assessee is a person by whom any tax or any other sum of money is payable or in respect of whom any proceeding has been taken for the assessment of his / its' income or loss or of the income or loss of any other person in respect of which he / it is assessable or of the amount of refund due to him / it or to such other person under the Indian Income Tax Act, 1961 (IT Act).

e) Categories of Assessees

The Income Tax Act recognizes seven categories of persons chargeable to tax:

- Individuals
- Hindu Undivided Families (HUF)
- Companies
- Firms
- Association of persons (AOP) or Bodies of individuals (BOI)
- Local Authorities
- Artificial juridical persons not falling within any of the preceding categories.

Residence

Under the Income Tax Act, the incidence of tax on a taxpayer depends on his residential status. Assessees are divided into the following two categories:

- Resident in India
- Non-resident in India

Residential status and basis of charge

Individual

Conditions for being Resident are as under:

Category	Days for which he should be in India in the previous year	Days for which he should be in India, during 4 years preceding the previous year
Indian citizen leaving India during the previous year as member of crew of an Indian ship or for employment outside India.	182 days or more	Not applicable
Indian citizen or person of Indian origin who being outside India, comes on a visit to India during the previous year.	182 days or more	Not applicable
Any other individual -		
(1) Either Case 1; or	182 days or more	Not applicable
(2) Case 2:	60 days or more	365 days or more

Conditions for being a 'Resident and Ordinarily Resident':

1. Should be 'a resident' in India in 9 out of 10 previous years preceding the relevant previous year; and
2. Should be in India for 730 days or more during 7 previous years preceding the relevant previous year.

Firm/Association of Persons

If control and management is situated wholly outside India, it is non-resident otherwise it is resident.

Company

If the control and management is situated wholly in India, it is resident, otherwise non-resident. An Indian Company is always resident. Companies are further classified into two categories viz. Domestic and Foreign Company: Domestic company means an Indian company or any other company, which has made prescribed arrangements for the declaration and payment of dividend within India. Foreign company means a company, which is not a domestic company.

Others

If the control and management is situated wholly outside India, it is non-resident, otherwise it is resident.

Basis of Charge

Time & place of accrual/ Receipt of income	Resident & Ordinarily Resident	Resident & Not Ordinarily Resident	Non-Resident
Received in India by him or on his behalf	Y	Y	Y
Deemed to be received in India by him or on his behalf	Y	Y	Y
Accrues or arises to him in India	Y	Y	Y
Deemed to accrue or arise to him in India	Y	Y	Y
Accrues/ arises & received outside India from business controlled or profession set up in India	Y	Y	
Accrues/ arises & received outside India from business controlled or profession set up outside India	Y		

Heads of Income

The income liable to tax is to be computed under the following various heads:

- Income from Salaries
- Income from House Property
- Profits and Gains from Business and Profession
- Capital Gains
- Income from Other Sources

Rates of Tax

Individuals, Hindu Undivided Families and Body of Individuals:

Total Income Slab	Rate of Tax(A.Y. 2006-07)	Education Cess@(EC)
Assessment Year 2006-07		
Up to Rs 100, 000*	Nil	Nil
Rs 100, 001 – Rs 150, 000	10%	2%
Rs 150, 001 – Rs 2, 50,000	20%	2%
Rs 250,000 above	30%	2%

There is a surcharge of 10 % for income exceeding Rs. 1,000,000 (One Million)

{*Rs.125,000 in case of a women, resident in India,

Rs. 150,000 in case of an individual resident in India who is 65 years of age or above.}

@ An additional tax surcharge to promote education in India

Others

Category	Rate of Tax(A .Y. 2006-07)	Surcharge(SC)	Education Cess(EC)
Partnership Firms	30%	10%	2%
Domestic Company	30%	10%	2%
Foreign Company	40%	2.5%	2%

Dividend Income

Dividend (other than a deemed dividend explained below) declared by a domestic company is exempt in the hands of the recipient and is taxed in the hands of the company @ 14.025.

Deemed dividend under section. 2(22)(e) of Income Tax Act- Any payment made by a public limited company in India to a shareholder holding 10% or more of the voting powers of the company or to any person in which such a shareholder is substantially interested or any payments made by a public limited company on behalf of or for the individual benefit of such a shareholder is deemed to be a dividend in the hands of the recipient, taxable in the hands of the shareholder and not liable to tax in the company.

Capital Gains Tax

Capital gains arising from sale of capital assets are classified into two categories-

Short term capital gains means any gains arising from transfer of capital assets which are held for a period of 36 months or less (12 months or less in case of shares held in a company, other securities listed on a recognised stock exchange in India or a unit of a mutual fund registered in India). Such short term capital gains are taxable at the normal tax rates applicable to each person.

In case of equity shares and equity oriented units of mutual fund , which are sold on recognised stock exchanges in India and on which securities transaction taxes have been charged, short term capital gains are taxable at special rate of 10% (plus applicable SC & EC @ 2%).

Long term capital gains are capital gains other than short term capital gains. Such long term capital gains are taxable at special rate of 20% (plus applicable SC & EC @ 2%). In computing the capital gains, the cost of acquisition of the capital asset is indexed as per the cost inflation index of India.

In case of securities listed on recognised stock exchanges in India and in case of units of mutual funds registered in India, an option is available to tax the capital gains @ 10% (plus applicable SC & EC @ 2%) without taking the benefit of indexation of the cost of acquisition.

In case of equity shares and equity oriented units of mutual fund , which are sold on recognised stock exchanges in India and on which securities transaction taxes have been charged, long term capital gains are exempt from tax.

Exemptions from capital gains tax are available in certain cases if such capital gains or sales proceeds from the capital assets are reinvested in some other specified capital assets.

Presumptive Taxation

The Income Tax Act provides for the levy of presumptive taxes in the case of certain very small business.

Withholding Tax/Tax Deducted at Source (TDS)

Under Indian Income Tax laws, tax has to be withheld at source by the person responsible for making the payment if such a payment is taxable in India in the hands of the payee. Such tax has to be deducted at the time of credit to the account of the payee or payment, whichever is earlier. The rates for such deduction are provided in the Income tax Rules.

Tax Concessions

The Government of India provides various incentives for encouraging the development of industries and exports and the promotion of programs for the betterment of the society. It also provides various other incentives and exemptions for setting up of Industrial Undertakings in the specified areas in India. Such incentives and exemptions are given to tap the unutilised resources of India.

Some of the deductions allowed in the computation of income under the head 'Profits and Gains from Business and Profession' in this connection are as under:

Nature of Business	Activity should start within the period	Exemption
New undertaking engaged in the business of development or development, operating and maintaining or operating and maintaining of infrastructure.	1st April, 1995 and onwards	100% of the profits for the first 10 years within a time frame of 15 years (for port, airport, inland waterway or inland port), 20 years in any other case.
Undertaking which develops or develops and operates or maintains and operates an industrial park or develops a special economic zone (SEZ)	1st April, 1997 to 31st March, 2006.	100% of the profits for the first 10 years within a time frame of 15 years from the year in which the undertaking develops an industrial park or SEZ.
Undertaking set up for generation or generation and distribution of power.	1st April, 1993 to 31st March, 2006.	100% of the profits for the first 10 years within a time frame of 15 years from the year in which the undertaking generates transmission or distribution of power.
Undertaking which undertakes substantial renovation and modernization of the existing transmission or distribution lines.	1st April, 1994 to 31st March, 2006.	100% of the profits for the first 10 years within a time frame of 15 years from the year in which the undertaking starts transmission distribution by laying network of new transmission or distribution lines.
Undertaking set up in the State of Jammu & Kashmir provided	1st April, 1993 to 31st April, 2007	100% of profits for first five years and then 25% (30% in

it does not manufacture articles or things specified in part 'C' of Schedule 13 i.e. cigarettes / cigars of tobacco, manufactured tobacco and substitutes, distilled / brewed alcoholic drinks, aerated branded beverages & their concentrates.		case of companies) of profits for next five years.
Undertaking set up in industrially backward state involved in the integrated business of processing preservation packing of fruits and vegetables or of handling, storage & transportation of food grains	1st April, 2001 and onwards	100% of profits for first five years and then 25% (30% in case of companies) of profits for next five years.
Undertaking involved in operating and maintaining a hospital in a rural area	1st October, 2004 to 31st March, 2008.	100% of the profits for first 5 years beginning with the year in which the undertaking begins to provide medical services.
New undertaking engaged in manufacture of article or thing (other than specified in 13th Schedule, mentioned earlier) in export processing zones or integrated infrastructure or industrial growth centre or industrial state or industrial park or software technology park or industrial area or theme park OR New undertaking engaged in manufacture of article or thing specified in 14th Schedule:		
In state of Sikkim	23rd December, 2002 to 31st March, 2012	100% for initial 10 years.
In state of Himachal Pradesh or Uttarnchal.	7th January, 2003 to 31st March, 2012	100% for initial 5 years and thereafter 25% (30% if company) of the profits for next 5 years
In any other north eastern states	24th December, 1997 to 31st March, 2007.	100% for initial 10 years.
Undertaking manufacturing and exporting articles or things or computer software situated in a special economic zone (SEZ)	1st April, 2003 onwards.	100% of export profits for initial five years, 50% of export profit for next 2 years 50% of export profit for next 3 years provided such profit is credited to SEZ investment allowance reserve to be utilised for new plant and

		machinery.
100% export oriented undertaking manufacturing and exporting articles, things or computer software.	On or before 31st March, 2009(As the benefit expires from Assessment year 2009-2010)	100% of export profits upto Assessment year 2009 – 2010
Undertaking manufacturing hand made articles or things, which are of artistic value and which requires use of wood as a main raw- material provided 90% of its sales is exports.	On or before 31st March, 2009(As the benefit expires from Assessment year 2009-2010)	100% of export profits upto Assessment year 2009 – 2010
Schedule Bank incorporated in India or owning offshore banking unit in SEZ	-	100% of profits for first three years and 50% for the next two years.

Deductions and Concessions under other heads of Income

There are various deductions and concessions given to the assessee under the other heads of income which are designed to encourage savings and acquisitions of assets.

The Government of India also provides various other incentives and exemptions for setting up of Industrial Undertakings in the specified areas in India. Such incentives and exemptions are given to tap the unutilised resources of India.

Double Tax Relief

The purpose of a Double Taxation Avoidance Agreement is to assist tax payers in India and abroad to know in advance, to the extent practicable, the tax implications of the various transactions arising from the implementation of an agreement for foreign collaboration between any person in India and another outside India. Also there is a need to choose a foreign collaborator located in a country with which India has entered into an agreement for avoidance of double taxation. This is because the provisions of such bilateral agreements over-ride the provisions of the domestic laws and because the burden of tax falling on the collaborators in the two countries becomes much more clearly ascertainable in the light of such bilateral agreements. Most of these agreements are comprehensive and cover all types of income whereas some of these are limited to aircraft and/ or shipping profits.

Countries with which India has entered into Double Tax Relief agreement

Afghanistan	Jordan	Russian Federation
Australia	Kazakhstan	Saudi Arabia
Austria	Kenya	Singapore
Bangladesh	Korea (South)	South Africa
Belarus	Kuwait	Spain
Belgium	Kyrgyz Republic	Sri Lanka
Brazil	Lebanon	Sweden
Bulgaria	Libyan Arab Jamahiria	Swiss Confederation
Canada	Malaysia	Syria
China	Malta	Tanzania

Cyprus	Mauritius	Thailand
Czechoslovakia	Mongolia	Trinidad & Tobago
Czech Republic	Morocco	Turkey
Denmark	Namibia	Turkmenistan
Finland	Nepal	Ukraine
French Republic	Netherlands	U.A.E.
Germany	New Zealand	United Arab Republic
Greece	Norway	U.K.
Hungary	Oman	U.S.A.
Indonesia	Pakistan	Uzbekistan
Ireland	Philippines	Vietnam
Iran	Poland	Yemen Arab Republic
Israel	Portuguese Republic	People's Democratic Republic of Yemen
Italy	Qatar	Zambia
Japan	Romania	

Advance Rulings

Any Non-resident can apply to the government for any clarification on the taxability of the transactions undertaken or proposed to be undertaken with a resident in India. The ruling given by the authority shall be binding on the applicant only. The decision once given cannot be reversed under any circumstances.

Transfer Pricing

As per provisions of Income Tax Act, any income arising from an international transaction shall be computed having regard to the Arms Length Price.

International transaction means a transaction between two or more Associated Enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property or provision of services or lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of such enterprises. In addition, mutual agreement or arrangement between two or more associated enterprises for allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service, or facility provided or to be provided to any one or more of such enterprises. Thus cost-sharing arrangements among associated enterprises will also be subject to the Arms Length rule.

Arms Length Price means a price, which is applied or proposed to be applied in a transaction between persons other than associated enterprises in uncontrolled conditions. As per provisions of the Act, all or anyone of the associated enterprises must be a "non-resident".

An "enterprise" is an Associated Enterprise: -

- Which participates directly or indirectly in the management or control or capital of the other enterprise.
- If any person who participates in the management or control or capital of an enterprise also participates in the management or control or capital of the other enterprise.

Wealth Tax

This is a tax imposed on certain non-productive assets owned by the assessee. Some of the non-productive assets include jewellery, non-residential house property, etc. Investment in shares and other financial instruments are entirely exempt from Wealth tax. Wealth Tax is charged for every assessment year, on the net wealth of an individual / company, on the corresponding valuation date @ 1% of the amount by which net wealth exceeds Rs.1.5 million.

B. INDIRECT TAXES CUSTOMS DUTY

Customs duty is levied, predominantly, on import and partially on export of goods. Recently the custom duty rates have been standardised by the regulatory authorities and the levy load reduced to a great extent. The customs duty on imports is levied when the goods cross the custom frontiers, i.e., when they enter the territorial boundaries of India. Goods not having a favourable market can be stored in the warehouse facility provided by the Customs authority subject to payment of certain charges. Customs duty would be payable when the goods are cleared from warehouse. Certain goods for import fall under the Negative List whereby specific permission is required before its import.

EXCISE DUTY

Excise duty is a charge leviable on excisable goods manufactured in India. The incidence of tax is normally passed on to the buyer. Though the tax levy is on the manufacture of goods, the tax is required to be paid on removal of goods from the factory premises where the manufacture takes place. Thus the outflow of funds can be delayed till the goods are removed from the factory. Double taxation on the goods manufactured, which consists of duty paid on raw materials can be avoided by applying the provisions of CENVAT (Central Value Added Tax)

SALES TAX

Sales tax is levied on the value of goods sold. The value of goods will include the cost of manufacture, excise duty levied on the cost of manufacture and profit margin adjusted in the unit rate. Sales tax is recovered from the first buyer and passed on the exchequer. Second Sales does not bear the burden of Sales Tax. Rates of sales tax are different in various states.

The Government has now implemented a Value Added Tax (VAT) regime in most of the States from 1st April 2005. After implementation of VAT throughout India, there will be a uniform rate structure among all the states. The rates of VAT range from 4% to 16% depending upon the items. The VAT scheme in India is quite similar to those prevailing in other Countries. Accordingly it removes the cascading effect of tax for intermediate businesses.

Stamp Duty

Almost all documents executed in India are chargeable to Stamp Duty at various rates. The rate structure is decided by the states. The legal enforceability of any document requiring to bear stamp duty is considered by any authority only when it bears stamp at the prescribed rate applicable in the place of its execution.

Octroi Duty

This is a tax levied by the municipalities of various towns and cities at the time of entry of goods into such towns and cities. It is also identified as entry tax for entry of goods in the respective jurisdiction of the local authorities. Exemptions and concessions in the duty are being offered by local authorities depending upon their requirements.

Service Tax

Service tax is basically levied on the value of the services provided. Presently about 85 services are covered under the Service Tax net.

The Current rate of Service Tax is fixed at 10.2% on the value of chargeable services.

Tax Concessions for Non-Resident Indians

Besides the normal exemption available to all assessees, the following income of Non-Resident Indians (NRI) is exempt from income tax:

- Income from interest on money standing to credit in a Non-resident (External) Account in India.
- Interest, premium on redemption or any other payments on NRNR deposits and other notified bonds, securities, or savings certificates issued by the Government.
- Interest on "NRI Bonds 1998" and "NRI Bonds (Second Series) issued by State Bank of India purchased in foreign exchange. This exemption continues even after person becomes resident except in the year of premature encashment.
- Income from units of Mutual Funds specified under the Income Tax Act.
- Income by way of dividends specified under the Income Tax Act.

export oriented units

With a view to giving impetus to its export drive, the government has set up Export Processing Zones (EPZ's), which provide almost free trade environment for export production to make Indian export products more competitive in the world market.

The Government has introduced various schemes to offer special incentives and tax concessions to businesses engaged in exports such as the 100% Export Oriented Units (EOU's) Scheme, Software Technology Parks (STP's) Scheme and the Electronic Hardware Technology Parks (EHTP's) Scheme. The schemes provide for a minimum value addition to the cost of production and the units have to be a net foreign exchange earner.

Export Oriented Units (EOU's) are those units, which generate more than 75% of their total revenue through exports. The units under these schemes are required to export their production excluding rejections or items otherwise specifically permitted for supply to the Domestic Tariff area.

Special Economic Zone

The Special Economic Zone (SEZ) Scheme has become operational after issuing of notifications by the Government on 30th May 2000.

Distinctive Features of SEZ

- A designated duty free enclave and to be treated as foreign territory for trade operations and duties and tariffs.
- A SEZ could be in the private, public or joint sector.
- SEZ units could be for manufacturing, trading and service.
- No routine examinations by customs of export and import cargo.
- Unlimited sale in Domestic Tariff Area (DTA) on full duty.
- SEZ units to be positive net foreign exchange earner.
- No fixed wastage norms.
- Full freedom for sub-contracting between SEZ units.
- No separate documentation required for customs or EXIM policy.
- 100% foreign direct investment through automatic route in the manufacturing sector.
- 100% of profit earned by units in SEZ is exempt up to Assessment Year 2010-11.

Software Technology Parks

STP Scheme

The STP scheme is a 100 percent export oriented scheme for the development and export of computer software, including export of professional services using communication links or physical media. This scheme is unique in its nature as it focuses on one product/sector, i.e. computer software. The scheme integrates the government concept of 100 percent Export Oriented Units (EOUs) and Export Processing Zones (EPZs) and the concept of Science Parks/Technology Parks, as operating elsewhere in the world

- Approvals are given under single window clearance scheme.
- A company can set up a STP unit anywhere in India.
- 100% Foreign Equity is permitted and approved by the jurisdictional Director of STPI.
- All the imports of Hardware & Software in the STP units are completely duty free.
- Import of second-hand capital goods is also permitted.
- Minimal "Minimum Export Performance" norms i.e. US\$ 0.25 million or 3 times CIF Value of imported goods whichever is higher & 10% Net
- Foreign Exchange Earnings against Export Earnings to be achieved over a period of five years.
- Use of computer system for commercial training purposes is permissible subject to the condition that no computer terminals are installed outside the STP premises.
- Sales in the Domestic Tariff Area (DTA) shall be permissible up to 50% of exports in value terms.
- STP units are exempted from payment of corporate income tax up to 2010.
- The capital goods purchased from the Domestic Tariff Area (DTA) are entitled for benefits like exemption of excise Duty & reimbursement of Central Sales Tax (CST)
- Capital invested by Foreign Entrepreneurs, Know-How Fees, Royalty, Dividend etc., can be freely repatriated after payment of Income Taxes due on them, if any.
- Repatriation of foreign currency for payments can be freely done

Investment in India - Foreign Direct Investment

Foreign Direct Investment (FDI) is permitted under the following forms of investments

- Through financial collaborations.
- Through joint ventures and technical collaborations.
- Through capital markets via Euro issues.
- Through private placements or preferential allotments.

Forbidden Territories

FDI is not permitted in the following industrial sectors:

- Retail Trading.
- Atomic Energy.
- Lottery Business
- Gambling and betting
- Housing and real estate business
- Agriculture (excluding floriculture, Horticulture, Developments of Seeds, Animals Husbandry, Pisciculture and Cultivation of Vegetables, Mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than tea plantations)

Foreign Investment through GDRs (Euro Issues)

Foreign Investment through GDRs is treated as Foreign Direct Investment

Indian companies are allowed to raise equity capital in the international market through the issue of Global Depository Receipts (GDRs). GDRs are designated in dollars and are not subject to any ceilings on investment. An applicant company seeking Government's approval in this regard should have a consistent track record of good performance (financial or otherwise) for a minimum period of 3 years. This condition would be relaxed for infrastructure projects such as power generation, telecommunications, petroleum exploration and refining, ports, airports and roads.

Investment in India - Foreign Direct Investment - Approval

Foreign direct investments in India are approved through two routes

Automatic approval by RBI

The Reserve Bank of India accords automatic approval within a period of two weeks to all proposals involving foreign equity up to the prescribed limits in the relevant category of the industry if prescribed conditions are fulfilled.

The lists are comprehensive and cover most industries of interest to foreign companies. Investments in high-priority industries or for trading companies primarily engaged in exporting are given almost automatic approval by the RBI.

In the following sectors FDI is permitted partially through the automatic approval route of RBI

- In Private Sector Banking investment is limited to 49%
- In Insurance investment is limited to 26%
- In telecommunications investment is limited to 49%
- Exploration and mining of diamonds and precious stones, investment is limited to 74%

In Airports investment beyond 74% requires Government approval.

Automatic Route of RBI for FDI is not available in the following:

- Domestic Airlines
- Petroleum Sector (except for private sector oil refining)
- Companies investing in infrastructure and Service Sector
- Defense and Strategic Industries
- Atomic Minerals
- Print Media
- Broadcasting
- Postal Services
- Courier Services
- Establishment and operation of Satellites
- Development of Integrated Township
- Tea Sector

The FIPB Route

Processing of non-automatic approval cases

Foreign Investment Promotion Board (FIPB) approves all other cases where the parameters of automatic approval are not met. Normal processing time is 4 to 6 weeks. Its approach is liberal for all sectors and all types of proposals, and rejections are few. It is not necessary for foreign investors to have a local partner, even when the foreign investor wishes to hold less than the entire equity of the company. The portion of the equity not proposed to be held by the foreign investor can be offered to the public.

The Foreign Investment Promotion Board (FIPB) has been constituted by the Government with a view to promote and attract foreign investment in India. The FIPB is a high powered committee comprising the Principal Secretary to the Prime Minister (Chairman), Finance Secretary and Commerce Secretary, and is located at the Ministry of Industry.

HLB in India

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