MOORE STEPHENS SINGHI

Doing Business In India 2018

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A Legacy of Values

1. COUNTRY PROFILE

Official name	Republic of India
Capital	New Delhi
Location	Southern Asia, bordering the Arabian Sea And Bay of Bengal, Between Burma and Pakistan
Area	3,287,240 km²
Climate	Varies from tropical monsoon in the south Temperate in the north
Time zone	UTC +5.5 no DST
Population	~1.35 billion
Currency	Indian Rupee (INR) (₹)
Language	22 official languages recognized by the Constitution English is widespread for business circles
Religion	80% Hinduism 14% Muslim 2% Christian 2% Sikh 2% Others
International	ASEAN East Asia Summit G-20 OIC
Government	Federal republic

Executive

The President of India is the Head of State and the Supreme Commander of the Indian Armed Force. He is elected by members of both the Houses of Parliament and the Legislative Assemblies of all the states for a renewable term of 5 years. The Prime Minister of India is the head of government and exercises most of executive powers. The Prime Minister is appointed by the President, and is supported by the party or political alliance holding the majority of seats in the lower House of Parliament. The executive branch of the Indian government consists of the President, the Vice-President and the Council of Ministers, headed by the Prime Minister. Any minister holding a portfolio must be a member of one of the Houses of Parliament. In the Indian parliamentary system, the executive is subordinate to the legislature, the Prime Minister and his council is directly responsible to the lower House of the Parliament.

Legislative

The legislature of India is the bicameral parliament and it comprises the upper house called the Rajya Sabha ("Council of States") and the lower house called the Lok Sabha ("House of the People"). The upper house is a permanent body that has 245 members who serve in staggered six-year terms. The members are elected indirectly by the state and territorial legislatures in numbers proportional to their state's share of the national population. All 545 members of the lower house are directly elected by popular vote for five-year terms.

Judiciary

India has a unitary three-tier independent judiciary that comprises the Supreme Court, headed by the Chief Justice of India, 24 High Courts, and a large number of trial courts. The Supreme Court has original jurisdiction over cases involving fundamental rights and over disputes between states and the centre; it has appellate jurisdiction over the High Courts. It has the power to declare the law and to strike down union or state laws which contravene the constitution, as well as to invalidate any government action it deems unconstitutional.

Economy:

IMF Data	2014	2015	2016	2017
GDP, current prices (USD thousand billions)	2.04	2.1	2.27	2.61
GDP per capita (USD thousands)	1.61	1.64	1.75	1.98
Inflation, End of Year	5.3%	5.3%	3.6%	4.7%

2. Business Entities and Accounting

2.1. Incorporation Options

The principal business entities for doing business in India are:

- Limited liability company - public or private or one person
- Partnership
- Limited liability partnership (LLP)
- Sole proprietorship

2.1.1. Companies

A company may be incorporated either as a public or private company or a One Person Company.

The characteristics and requirements of the various types of company are outlined below:

	Public	Private	One Person Company
Minimum number of subscribers / shareholders / members	7	2	1*
Maximum number of subscribers / shareholders / members	No limit	200	1*
Minimum number of directors	3	2	1
Invitation to public for shares / debentures / deposits from public permitted	Yes	No	No

**The member should be a natural person, Indian citizen and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one financial year.*

2.1.2. Partnership

Partnerships, governed by the Indian Partnership Act, 1932, are created by execution of a Partnership Deed. At least 2 members are required to start a partnership. The number of members should not exceed 100. The partners are jointly and severally liable for the debts of the partnership.

Prior approval from the Reserve Bank of India (RBI) is required if foreign nationals intend to become partners in an Indian partnership.

2.1.3. Limited liability partnership

A Limited Liability Partnership is an alternative business vehicle that not only gives members the benefit of limited liability but also the flexibility of organising their internal structure as a traditional partnership. It is a separate legal entity and, while the LLP itself is liable for the full extent of its assets, the liability of the members is limited.

Every LLP shall have at least 2 partners and shall also have at least 2 individuals as Designated Partners, of whom at least 1 shall be a resident in India. The duties and obligations of Designated Partners shall be as provided in the law.

Investment in a LLP by a body corporate incorporated outside India is governed by the foreign direct investment ('FDI') policy of the RBI along with the provisions of the Foreign Exchange Management Act, 1999. As per the provisions of these legislations, a person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs. However, some specified persons are not eligible to invest in LLPs.

Further, the eligible investor would be eligible to invest, only in LLPs operating in sectors / activities where 100% FDI is allowed under the automatic route. LLP engaged in activities wherein investment is allowed through government route or where investment is allowed for less that 100% through automatic route are not eligible for FDI.

2.1.4. Sole proprietorship

Sole proprietorship is a form of business organisation in which an individual introduces his / her own capital, uses his / her own skill and intelligence in the management of its affairs, assumes all the risks of business and is solely responsible for the results of its operations.

2.1.5. Others

In addition to the above legal entities, the following types of entities are available for foreign investors / foreign companies doing business in India:

- **Company:** A foreign company can set up a Company in India to carry out business activities. Such a company is treated as an Indian resident. At least 2 shareholders for a private limited company and 7 shareholders for a public limited company are mandatory. In addition, there is also the requirement that one of the directors of the entity should be an Indian resident. The activities of such a company need to comply with the provisions of the foreign direct investment (FDI) policy.

- **Liaison office:** A Liaison Office ('LO') (also known as Representative Office) can undertake only liaison activities, (i.e., it can act as a channel of communication between Head Office abroad and parties in India). It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such LO are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. Permission to set up such offices is initially granted for a period of 3 years. However, such permission may be extended from time-to-time.

- **Project office**: A foreign company planning to execute a particular project in India can set up a temporary project office ('PO'). A Project Office can only undertake activities relating and incidental to the execution of specific projects in India and has to be wound up following the completion of the project.

- **Branch office:** Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Office ('BO') in India with specific approval of the RBI. Such BOs are permitted to represent the parent / group companies and undertake certain specified activities. Normally, the BO should be engaged in the activity in which the parent company is engaged. A BO is not allowed to undertake manufacturing or processing activities or retail trading activities of any nature in India, directly or indirectly. Profits earned by the BOs are freely remittable from India, subject to payment of applicable taxes.

- **Joint venture Company with an Indian Partner (Equity participation):** Subject to FDI guidelines, a foreign company may also set up a joint venture by forming strategic alliances with Indian partners. Generally, a foreign company identify partners in the same area of activity and enters into business agreement in which parties agrees to develop, for a finite time, a new entity and new assets by contributing equity. The parties exercise control over the enterprise and consequently share revenues, expenses and assets.

2.2. Accounting and Auditing

Companies are required, under the Companies Act 2013, to keep and maintain such books and records to enable a true and fair view of the state of affairs of the company to be prepared. The books of account must be kept for a minimum of 7 years. Financial statements should be presented in INR.

The Institute of Chartered Accountants of India (ICAI) is the apex institution that regulates the accounting and auditing practices in India.

Previously, in India, the companies only followed domestic accounting standards (Indian GAAP or IGAAP) while preparing their financial statements. On 2nd January 2015, the Press Information Bureau, Government of India, Ministry of Corporate Affairs (MCA) issued a note outlining the various phases in which Indian Accounting Standards converged with IFRS (Indian Accounting Standards - IND AS). The application of Ind AS as per the notification of the Ministry of Corporate Affairs dated 16th February, 2015 is tabulated below:

Phase	Date of Applicability	Class of Companies (fulfilling either criteria)
I	On or after 1st April, 2016	Listed or unlisted companies with a net worth of or exceeding INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies.
II	On or after 1st April, 2017	- All listed companies with a net worth of less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. - Unlisted companies with a net worth of or exceeding INR 2,500 million and less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies.
III	On or after 1st April, 2018	Non-Banking Financial Companies (NBFCs) with a net worth of or exceeding INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies.
IV	On or after 1st April, 2019	- All listed NBFCs with a net worth of less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies. - Unlisted NBFCs with a net worth of or exceeding INR 2,500 million and less than INR 5,000 million and holding, subsidiary, joint venture or associate companies of such companies.

- *Listed Companies / NBFCs also include companies / NBFCs in the process of listing.*
- *Any other company may voluntarily apply these Accounting Standards in preparation of their financial statements for the period ended 31st March 2015 and onwards.*

Scheduled commercial banks would have to start implementing the new accounting norms from April 1, 2019 with comparatives for the periods ending March 31, 2019 or thereafter. It would be applicable for consolidated as well as individual financial statements.

The following audits are conducted in respect of the financial statements:

- **Statutory audit:** Mandatory for every company whether public or private. It must be conducted annually in respect of the financial statements of every company by an auditor appointed by the company in its Annual General Meeting or the Board of Directors (in case of the first appointment).

- **Internal audit:** As per section 138 of the Companies Act, 2013, it is mandatory for every listed public company. For unlisted public company, where the paid-up capital of the company exceeds INR 500 million or the annual turnover during the preceding financial year exceed INR 2,000 million or outstanding loans or borrowings from banks or public financial institutions exceed INR 1,000 million or more at any point of time during the preceding financial year or outstanding deposits exceed INR 250 million or more at any point of time during the preceding financial year, the Company is required to have an appropriate internal audit system commensurate with the size of the company and nature of its business. Every private company having annual turnover exceeding INR 2,000 million during the preceding financial year or outstanding loans or borrowings from banks or public financial institutions exceeding INR 1,000 million or more at any point of time during the preceding financial year is required to have an internal audit system. The internal auditor reviews and issues their report after conducting an internal audit of the company.

- **Cost audit:** Applies to a list of industries and the products covered under section 148 of the Companies Act, 2013 such as cement, cycles, refrigerators, electric motors etc. Cost accounts shall be audited by a Cost Accountant in practice.

- **Tax audit:** Required under the Income tax Act, 1961 and is mandatory for LLP and Companies with gross turnover exceeding INR 10 million and professionals with gross receipts exceeding INR 50 million. Gross turnover shall include any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, notwithstanding any right arising as a consequence of such payment. The tax audit comprises verification of all records, documents, books of account etc. to determine the actual tax liability of the entity. Only a Chartered Accountant holding a valid certificate of practice may carry out a Tax Audit.

- **Transfer Pricing Audit:** Required under the Income tax Act, 1961 and is mandatory for entities entering cross border transactions with associated enterprises (of any amount) or specified domestic transactions with related parties in excess of prescribed limits. The basic objective of the transfer pricing audit is to verify whether the International transactions or specified domestic transactions entered into by the Indian entity with its associated enterprises have been entered into at an arm’s length price or not.

- **Internal Financial Control (IFC) Audit:** Companies Act, 2013 has placed special emphasis on IFC Audit which would be applicable on all companies registered under the Act (other than one person companies and private companies which satisfy prescribed conditions). Under section 143 of the Companies Act, 2013, the auditor’s report shall now give separate audit report (as an annexure) stating whether the company has adequate IFCs in place and the operating effectiveness of such controls. Under section 134 of the Companies Act, 2013, the directors responsibility statement would also state that the directors has laid down IFCs to be followed by the company and that such IFCs are adequate and operating effectively (only for listed entities).

2.3. Corporate Filing Requirements

Companies incorporated in India under the Companies Act are required to file annual accounts with the Registrar of Companies. Foreign investors and / or their agents in India are required to file certain statements and returns at periodic intervals as prescribed by the RBI under the Foreign Exchange Management Act, 1999.

Various reporting requirements are also prescribed under the Companies Act, 2013 for various types of companies.

3. Finance and Investment

3.1. Exchange Control

The RBI is the governing authority for all matters relating to foreign exchange management and control. Any transaction in a foreign currency is governed by the Foreign Exchange Management Act, 1999. Residents are required to sell foreign money coming into their possession to a central bank or specialized government agency at the exchange rate set by the government.

Foreign Investment in various sectors is permitted, and there has been in increased flow of foreign exchange in India since the Government of India replaced controls under FERA (Foreign Exchange Regulation Act) with regulations under FEMA (Foreign Exchange Management Act). FEMA makes provisions in respect of foreign exchange transactions, which are of the following two types:

1. Current account transactions: the INR is fully convertible for trade and current account purposes. Except for certain specified restrictions, where RBI's approval is required, foreign currency may be freely purchased for trade and current account purposes
2. Capital account transactions: such transactions are not permitted unless they are specifically allowed and prescribed conditions are satisfied

3.2. Sources of finance

3.2.1. Banking

The banking system in India is advanced and well developed to meet the requirements of trade, commerce and industry and is comprised of public and private sector banks, co-operative banks, foreign banks and regional rural banks. The banking sector is regulated by the Reserve Bank of India (RBI).

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 units. Banks also grant working capital facilities secured against the current assets of the business entities and other non fund based limits such as Letters of Credit / Bank Guarantees etc.

3.2.2. Venture capital funds and companies

Venture capital funding is an option for funding business. 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, bridge financing, growth capital and are active private equity players. Venture capital firms also provide entrepreneurs with incubator facilities with innovative ideas. These funds are regulated by the Securities Exchange Board of India (SEBI) and are now mostly structured as Alternative Investment Funds with difference categories depending on the nature of each fund.

3.2.3. Stock Exchange

The Indian capital markets are extremely advanced and efficient with over 5,000 listed companies.

There are 6 stock exchanges and 9 commodity exchanges in India; however, the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) are the most significant. The growth of the Indian corporate sector is thereby facilitated by the provision of an efficient capital raising platform.

3.3. Incentives and restrictions for Foreign Investors

India offers foreign investors a balanced package of fiscal incentives including:

- Complete tax exemptions
- Investment incentives offered by Central and State Governments
- Tax treaties with around 93 countries and limited agreements with 8 countries

India has a number of Special Economic Zones (SEZ). SEZs are considered as foreign territory in all that concerns taxes and customs. Companies in a SEZ are eligible for a total exemption from tax for the first 5 years and a 50% exemption from tax due for the following 5 years.

India is attracting the attention of foreign investors and a number of incentives are available. FDI is however, not permitted in certain sectors including lottery business including government / private lottery, online lotteries, gambling and betting including casinos, real estate business, construction of farm houses, etc. Also, in some sectors, FDI is permitted only after obtaining specific approval of the Government. In the following key sectors, the level of FDI is subject to restrictions and fulfillment of prescribed conditions:

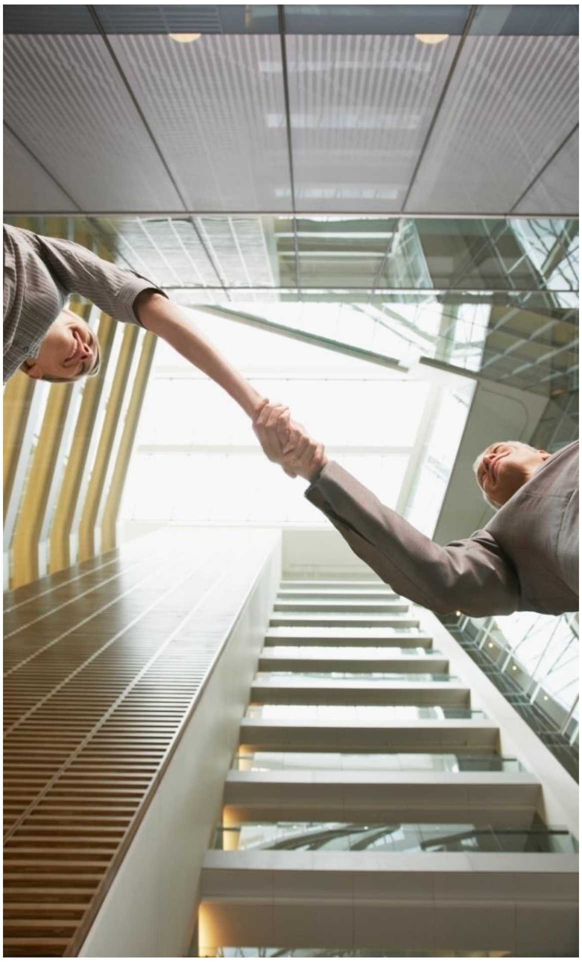
- Private sector banking (automatic up to 49% and Government route beyond 49% and up to 74%)
- Insurance (automatic up to 49%)
- Defense (Automatic up to 49%, Government route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded)
- Private security agencies (automatic up to 49% and Government route beyond 49% and up to 74%)
- Telecommunication (Automatic up to 49% and Government route beyond 49%)
- Aviation (100%)
- Mining and exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores (100%)

4. Employment Regulation and Social Security

4.1. Entry Visa and Work Permit Requirements

Foreigners wishing to visit India can obtain a visa from the Indian Mission in the country of their residence. They should possess a valid international passport, except in the case of nationals of Bhutan and Nepal for whom an approved means of identification is sufficient.

The following types of visas may be granted to foreigners wishing to work in India:



4.1.1. Business visa

A business visa is required by persons visiting India on business related trips such as purchase / sale of industrial or commercial products, exploring possibilities to set up business or ventures in India. A multiple entry business visa may be granted for one year or more (US citizens can get 5 years or 10 years multiple entry business visa). However, the period of stay in India for each visit is limited to 6 months.

4.1.2. Employment visa

A multiple entry employment visa may be granted on a case by case basis to foreign nationals wishing to take up employment in India. An employment visa must be obtained from the Indian Consulate in the country of residence of the applicant prior to departure for India.

4.1.3. Entry visa

An entry visa is issued to those of India origin visiting India for tourism or other non-business related purposes. Members of the family of a person employed in India are also eligible for an entry visa. In the latter case, documents establishing the employment of the person employed in India along with a copy of their employment visa must be attached to the application.

4.1.4. Tourist Visa

A tourist visa is given to those visiting India for tourism or other non-business related purposes and is generally valid up to six months.

4.2. Hiring Local Employees

India has one of the world's largest pools of scientific and technical personnel: this serves as an important attraction for foreign investors.

Contracts of employment may be expressed or implied, in writing or verbal. Contract labour in India must be paid a minimum wage and, except as required under the applicable laws relating to Provident Fund (see 4.4), ESI (see 4.4), withholding tax etc, wages must be paid without deductions.

There are various acts which regulate labour and employment in India, including:

- Employee's Compensation Act, 1923
- Children (Pledging of Labour) Act, 1933
- Payment of Wages Act, 1936
- Employees' State Insurance Act, 1948
- Minimum Wages Act, 1948
- Indian Factories Act, 1948
- Employees’ Provident Funds and Miscellaneous Provisions Act, 1952
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Maternity Benefit Act, 1961
- Equal Remuneration Act, 1976
- Contract Labour (Regulation & Abolition) Act
- Child Labour (Prohibition & Regulation) Act, 1986

4.3. Trade Unions

There are, at present, numerous trade unions in India which regulate the aspirations of the working classes. In India, there is a guaranteed fundamental right to form Labour unions. This right applies whether a union has been recognized or not. The Trade Unions Act, 1926 is completely silent on the question of recognizing a trade union for the purpose of collective bargaining. During the collective bargaining process, workers are represented through trade unions. Collective bargaining aims to resolve issues pertaining to wages, working conditions, health and safety, and working hours of workers.

4.4. Social Security System

India has a sound social security system in place. The principal social security laws enacted in India are the following:

4.4.1. The Employees’ State Insurance Act, 1948

An employee covered under the scheme must contribute 1.75% of the wages paid/payable and an employer contributes 4.75% of the wages paid /payable to an employee. For newly implemented areas, the contribution rate is 1% of wage of employee and 3% payable by employer for first 24 months. Employees receiving daily average wages upto INR 137 are exempted from payment of contribution. The employers will however contribute their own share in respect of these employees.

4.4.2. The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952

Employers with 20 or more employees must pay contributions equivalent to 12% of their salaries to the employees’ provident fund. Employees earning not more than INR 15,000 per month must pay contributions of 12% of their salary to the employees’ provident fund. Higher paid employees may make voluntary contributions. Contributions are deductible for income tax purposes subject to fulfillment of prescribed conditions.

4.4.3. The Payment of Gratuity Act, 1972

Gratuity is a statutory benefit paid to employees who have rendered continuous service for at least five years under the Payment of Gratuity Act, 1972. The employee is entitled to 15 days of pay for each completed year of service. The employer can also structure a gratuity benefit that is higher than statutory requirements. The gratuity benefit is payable on cessation of employment (either by resignation, death, retirement or termination, etc) by taking the last drawn salary as the basis for the calculation.

5. Taxation

The indirect tax structure in India has now been upgraded to Goods & Services Tax (GST), a major reform of the Indian tax system. It replaces a plethora of cascading center, state, inter-state, and local taxes with a single, nationwide, value-added tax on goods and services.

Direct Taxes

- Income tax
- Corporation Tax
- Capital Gains Tax

Indirect Taxes

- Customs duty
- Stamp duty
- GST-
  - SGST
  - CGST
  - IGST

5.1 Direct Taxes

The right to levy direct tax rests with Central Government.

5.1.1 Income tax

Corporate and personal taxation in India is governed by the Income tax Act, 1961. Income tax is levied on "total income" of entities and individuals for the financial year which is known as "previous year" in India. The tax year / financial year in India runs from 1st April until 31st March.

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

- Income from salaries
- Income from residential property other than the exempted residence
- Profits / gains from business / profession
- Capital gains
- Income from other sources

Certain exemptions and deductions are available for different tax payers under various provisions of the Income tax Act, 1961 including:

- expenditure for newly established undertakings in Free Trade Zones, Special Economic Zones, 100% export-oriented undertakings
- expenditure on scientific research, know-how
- expenditure on acquisition of patent or copyrights
- expenditure for obtaining a license to operate telecommunication services
- expenditure for carrying out rural development programmes

Withholding taxes [also referred to as Tax Deducted at Source (TDS)] is liable to be deducted on various categories of payments made within India and abroad at different rates. The deductee gets credit for the amounts deducted in their tax computation.

5.1.2 Corporate Tax

- Levied on all Indian Companies and companies having its Place of Effective Management in that tax year, in India.
- Foreign companies are taxed on income that arises, or is deemed to accrue or arise, in India or have a Permanent Establishment in India.
- Includes Minimum Alternative Tax ('MAT') which was introduced to bring Zero Tax companies under the income tax regime, whose accounts were made in accordance with the Companies Act.
- Includes Dividend Distribution Tax ('DDT') which is a tax levied on any amount declared, distributed or paid as dividend by any domestic company. Foreign companies are exempt from this tax.
- Includes Securities Transaction Tax ('STT') which is a tax levied on taxable securities transactions. There is no surcharge applicable on this.
- Equalization Levy is tax leviable on consideration received or receivable for certain specified service (viz., online advertisement, provision for digital advertising space or any facilities / service for the purpose of online advertisement. The applicable tax rate is 6% on gross consideration payable for service.

Income tax rates for individuals and Hindu undivided families:

Total Income	Tax Rate (Financial Year 2018-19)	Health and Health and Education Cess (on Income Tax and Surcharge)
Financial Year 2018-19		
Up to INR 250,000*	**Nil**	**Nil**
INR 250,001 – INR 500,000	**5%**	**4%**
INR 500,001 – INR 1,000,000	**20%**	**4%**
Above INR 1,000,000	**30%**	**4%**

*INR 300,000 in case of resident senior citizens above 60 years, INR 500,000 in case of resident senior citizens above 80 years. The amount of income tax shall be increased by a surcharge as follows:

Total income is upto INR 5 million	Nil
Total income is more than INR 5 million and upto INR 10 million	10%
Total income is more than INR 10 million	15%

Others

Category	Tax Rate (Financial Year 2018-19)	Surcharge (on Income tax)	Health and Education Cess (on Income Tax and Surcharge)
Partnership (including LLP)	**30%**	**12% (if net income exceeds INR 10 million)**	**4%**
Domestic company*	**25% for companies having turnover less than INR 2,500 million in the tax year 2016-17 and 30% for all other companies**	**7% (if net income exceeds INR 10 million)** **12% (if net income exceeds INR 100 million)**	**4%** **4%**
Foreign company	**40%**	**2% (if net income exceeds INR 10 million)** **5% (if net income exceeds INR 100 million)**	**4%** **4%**

* Note: All Companies incorporated in India as per Companies Act are Domestic Companies.

Minimum Alternate Tax ('MAT') on book profit is charged at 18.5% plus applicable surcharge and Health and Education Cess. A MAT applies if a Company's tax liability is calculated to be less than 18.5% of its deemed book profits. For all companies, where the minimum alternate tax applies, the excess of the liability over the tax calculated on ordinary principles may be carried forward and credited against future tax liabilities for up to 15 years.

Domestic companies are subject to Dividend Distribution Tax at a Basic rate of 17.6471% which is grossed up by Surcharge (of 12%) and Health and Education cess (of 4%) making the effective DDT rate of 20.5553%, on the amount of dividends declared.

5.1.3 Income Computation and Disclosure Standards

The Central Board of Direct Taxes vide its Notification No: 87/2016 dated 29th September 2016 notified 10 Income Computation and Disclosure Standards which is to be followed by all tax payers (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the Indian Income tax Act, 1961) at the time of computation of income chargeable to tax under the head "Profit and Gains of Business or Profession" or "Income from other sources" with effect from the tax year 2016-17.

5.1.4 Relief from Double Taxation

India has entered into Double Taxation Avoidance Agreement ('DTAA') with 93 countries and limited agreements with 8 countries. Most agreements currently in force lay down various tests in order to determine the actual residential status of the individual. Generally, the provisions of DTAA prevail over the domestic tax provisions. However, the domestic tax provisions may apply to the extent they are more beneficial to the taxpayer. The benefit of the DTAA will not be available unless a taxpayer obtains a **Tax Residency Certificate** from the government of the country where the taxpayer resides.

5.2 Indirect Taxes

Goods and Services Tax is a comprehensive destination based tax levy on manufacture, sale and consumption of goods and services at a national level under which no distinction is made between goods and services for levying of tax. Most of the central and state Indirect taxes shall be subsumed under GST. GST offers a multi-tiered system with tax rates varying from Nil, 5%, 12%, 18%, and 28% plus cess. Entire GST has classified into Central Goods and Services Tax ('CGST'), State Goods and Services Tax ('SGST'), Integrated Goods and Services Tax ('IGST') and Union Territory Goods and Services Tax ('UTGST').

5.2.1 Central Goods and Services Tax

Central GST or CGST would be levied on the intra-state supplies of goods and services. Hence, in case of intra-state supplies of goods and services, both the central and State government would combine their levies with an appropriate revenue sharing between them.

5.2.2 State Goods and Services Tax

State GST or SGST is a tax levied under the SGST Act on intra-state supplies of goods and services that is administered by the respective State Government.

5.2.3 Integrated Goods and Services Tax

Integrated GST or IGST is the tax levied under the IGST Act on the supply of any goods and / or services in the course of inter-state trade across India. Further, IGST would include any supply of goods and / or services in the course of import into India and export of goods and / or services from India. IGST will replace the present Central State Tax. Thus, IGST would be applicable for all inter-state transactions, import and export of goods and / or services.

5.2.4 Customs duty

Customs duty is levied on the import of goods. Although, Countervailing Duty in lieu of Excise Duty and Special Additional Duty of Customs has been subsumed by IGST, Basic Custom Duty has continued after the introduction of the GST regime. The rate of customs duty is levied as per the Customs Tariff Act, 1975, which is aligned with the Harmonized System of Nomenclature (HSN) followed internationally. Exemptions are available depending on the nature of goods, status of importer, country of import etc. Further with effect from 1 February, 2018, Social Welfare Surcharge @ 10% on the aggregate duties of customs is levied at the time of import.

5.2.5 Stamp duty

It is duty imposed at state level on certain legal instruments and commercial transactions. The rate of stamp duties varies from state to state.

There may be other state level taxes that are not covered above.

5.2.6 Incentives and benefits

There are several schemes which grant incentives and other benefits to tax payers including:

- Export promotion capital goods scheme - allows the import of capital goods on payment at a concessional rate of 5%, subject to fulfillment of export obligations. The Centre has modified existing export incentive schemes removing most exemptions provided on input taxes to align them with the Goods & Services Tax (GST) regime which has rolled in from 1st July 2018.

- Advance license scheme - inputs required to manufacture export products may be imported without payment of customs duty
- Duty drawback - Duty drawback means the refund of duty of customs and duty of central excise that are chargeable on imported and indigenous materials used in the manufacture of exported goods. Despite the rollout of GST, there are several blocked input taxes such as on transport fuels, electricity, stamp duties on immovable property, taxation from composition and unregistered dealer inputs Duty drawback scheme at its present shape is a well settled scheme seamlessly reimbursing the tax incidence on input and input services
- Input Tax Credit under GST Regime - Input tax credit is the credit that the manufacturer / service provider receives for paying input taxes towards input goods and services used. Similarly, a dealer is entitled to input tax credit if he has purchased goods for resale. All dealers are liable for output tax on taxable sales done in the process of their business.

Also, units which undertake to export their entire production of goods and services may set up an Export Oriented Unit located in an electronic hardware technology park, a software technology park or a biotechnology park in India.

Touch Points

Kolkata
161, Sarat Bose Road
Kolkata - 700026
Ph No.: +91 (0)33 - 24196000
Email: services@singhico.com

Mumbai
B2 402B Marathon Innova,
(Opposite Ganpatrao Kadam Marg)
Lower Parel
Mumbai - 400013
Ph No.: +91 (0)22 - 6662 5537
Email: services@singhico.com

Noida (Delhi Office)
Unit No. 1704, 17th Floor,
World Trade Tower, (Tower-B),
DND Fly Way, C-01, Sector-16,
Noida - 201301
Ph No.: +91 (0)120 – 2970005/92055 75596
Fax No.: +91 (0)11 - 3082 0183
Email: newdelhi@singhico.com

Bengaluru
114/1, Sai Complex,
3rd Floor, M.G. Road
Bangalore - 560 001, INDIA
Ph No.: +91 (0)8 0 4113 9278 / 2558 5587 / 2558 4859
Fax No.: +91 (0)80 2226 4859
Email: services@singhico.com

Chennai
Unit-11-D, 11th Floor,
Ega Trade Centre,
809, Poonamallee High Road, Kilpauk
Chennai - 600 010
Ph. No: +91 (44) 4291 8459
Email: services@singhico.com

Nagpur
1st Floor, VCA Complex,
Civil Lines,
Nagpur - 440001
Ph No.: +91 (0)712 - 664 1111
Fax No.: +91 (0)712 - 664 1122
Email: services@singhico.com

Hyderabad
5-4-187/3 & 4 Soham Mansion
2nd Floor, M. G. Road,
Secunderabad - 500 003
Ph No.: +91 (0)40 - 2754 2635/
2454 1015
Fax No.: +91 (0)40 - 2754 1015
Email: services@singhico.com

Ahmedabad
705 P B Parekh Tower
Near Diwan Ballubhai School,
Kankaria, Ahmedabad - 380022
Ph No.: +91 (0)79 2547 1562
Email: services@singhico.com