

SETTING UP BUSINESS IN INDIA



General Aspect

The Indian economy is the world's Sixth-largest by nominal GDP and third-largest by purchasing power parity (PPP) as per World GDP Ranking 2016. Following market-based economic reforms, India became one of the fastest-growing major economies; it is considered a newly developing country. India is a federal constitutional republic governed under a parliamentary system consisting of 29 states and 7 union territories. According to the International Monetary Fund (IMF) world economic outlook, as of 2015, the Indian economy is nominally worth US\$2.183 trillion; it is the 7th-largest economy by market exchange rates, and is, at US\$8.027 trillion, the third-largest by purchasing power parity.

To start business in India there are following Regulatory and Tax aspects:

Legal Forms of Business Entities

Indian/domestic companies and foreign companies having offices in India are regulated under the Companies Act, 2013. The law requires such entities to file their papers/forms/documents electronically. Unlike subsidiaries others have simple exit route. Foreign entities are required to appoint their representatives in India to receive notices and other communications from the government and other agencies.

India has different forms of legal structures, following is the broad overview:

Legal form	Feature	Remarks
Different types of entity that can be formed in India¹		
Private Limited Company	<p>Minimum Two Directors are required to start a Private limited company. Consent of all the directors is required for the major decisions of the company. Have to register with registrar of Company by following incorporation procedure as mentioned under the Companies Act 2013. Private Limited Companies can have up to 200 shareholders.</p> <p>The procedure for Incorporation of a Company with Foreign National or Foreign Entities or NRIs is similar to that of an incorporation of a private limited company with Indian Directors and Indian Shareholders. Notarization of foreign identity proof, address proof and other documents of foreign origin is one of the additional steps to be complied with while incorporating a company with NRIs or Foreign Entities.</p>	<p>Therefore, the most ideal entity for NRIs and Foreign Nationals to invest or start a business in India would be a Private Limited Company. Companies Act, 2013 permits NRIs, PIOs, Foreign Nationals and Foreign Residents to act as a Director of an Indian Company. The shareholding of the Indian Company can be held by a foreign national or foreign entity, subject to the FDI norms in India. Foreign Company can also set up wholly owned subsidiary in sectors where 100% foreign direct investment is permitted under the FDI policy.</p>

¹ The Central Government is implementing various single window clearances for coming up industries and start up business in India. Various other long drawn process compliances have been now eased with making available of various infrastructures. For start up business, self certification of compliances for 3 years are required to be made.

Public Limited Company	<p>Minimum 7 Members are required to start public limited company in India. A Limited Company is allowed to have unlimited shareholders. The public limited companies have more statutory compliances as compared to private company.</p> <p>Since, Reserve Bank of India allows 100% FDI in many of the sectors in India under the automatic route, the process for ownership of shares of an Indian Company by a Foreign National or Foreign Entity is simple.</p>	<p>Limited Company can be incorporated by the Foreign promoter if the number of investors in the venture would be more than 7 and the company would have to raise equity funds from a number of shareholders.</p>
Wholly Owned Subsidiary Company	<p>Foreign Company can also set up wholly owned subsidiary in sectors where 100% foreign direct investment is permitted under the FDI policy</p>	<p>For registration and incorporation, set of applications have to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies.</p>
LLP (Limited Liability Partnership)	<p>Limited Liability Partnership is prevailed by 'The Limited Liability Partnership Act, 2008' and various Rules made there under. Minimum 2 partners and there is no limitation of maximum number of partners.</p> <p>Liability of the partner is limited, to the extent their contribution towards LLP, except in case of intentional fraud or wrongful act of omission or commission by the partner.</p>	<p>Registration with Registrar of LLP required. Foreign Nationals can be a Partner in a LLP. A person can be admitted as a partner as per the LLP Agreement. All LLP except for those having turnover less than Rs. 40 Lacs or Rs. 25 Lacs contribution in any financial year are required to get their accounts audited annually as per the provisions of LLP Act 2008. LLP's can enter into Compromise / arrangements / merger / amalgamation</p>
Partnership under Partnership Act, 1932	<p>With 2 persons a partnership can start. Partnership deed is charter of the firm and denotes its scope. However, it is not a separate legal entity. The partnership firm has to be registered with necessary documents and compliances, Partnership Deed, affidavit etc.</p>	<p>Foreign Nationals cannot form Partnership Firm in India</p>
Joint Venture	<p>Joint Venture can be started with an Indian Partner. Foreign Companies can set up their operations in India by forging strategic alliances with Indian partners.</p> <p>The liability of the members can be limited by shares or guarantee. In the former, the personal liability of member is limited to the amount unpaid on their shares while in the latter; it is limited by a predecided amount. For companies with unlimited liability, the liability of its members is unlimited.</p>	<p>Subsidiaries can either be wholly owned or in joint venture with some Indian partner, as per RBI (FDI) rules. Except in few sectors where foreign direct investment cap is applicable, foreign entity can have 100% subsidiary.</p> <p>It can undertake all types of business activities, as may be permitted by its charter, which may include marketing, manufacturing, providing services, etc. No RBI approval is needed where 100% direct investment is permissible.</p> <p>It is treated as domestic company under Indian tax law and is eligible for all the tax deductions and benefits as provided to any other Indian company</p>

Liaison Office/ Repre- sentative Office	<p>Prior Approval of Reserve Bank of India (RBI). Initial Permission is granted for Three Years which could be subsequently extended by the RBI. As Liaison office cannot enter any commercial activity directly or indirectly, there- fore, earn any income in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/ import from/to India and also facilitate technical/financial collaboration between parent company and companies in India.</p> <p>Liaison office is required to submit annual activity report from its Chartered Accountant/ CPA to RBI to ensure that it has undertaken only those activities that have been permitted by the RBI.</p>	<p>A Liaison office is required to register itself with the Registrar of Companies (ROC) and to comply with certain procedural formalities, as prescribed under the Companies Act, 2013.</p> <p>Liaison Office has advantages like easy operations, less formalities and simple closer procedure. Operations of a Liaison office are limited to collection of market information on behalf of the company and providing information about the company and its products to existing/ potential customers.</p> <p>Branch, liaison and project offices are allowed to open non-in- terest bearing current account in India. Transfer of assets by branch/ liaison offices to subsidiaries or other liaison/branch offi- ces are allowed subject to RBI prior approval</p>
Project Office	<p>Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices cannot undertake or carry on any activity other than the activity relating and incidental to execution of the project.</p>	<p>Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI.</p>
Branch Office	<p>Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes:</p> <ul style="list-style-type: none"> • Export/Import of goods • Rendering professional or consultancy services • Carrying out research work, in which the parent company is engaged. • Promoting technical or financial collaborations between Indian companies and parent or overseas group company. • Representing the parent company in India and acting as buying/selling agents in India. • Rendering services in Information Technology and development of software in India. • Rendering technical support to the products supplied by the parent/ group companies. • Foreign airline/shipping company. 	<p>A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. Branch Offices established with the approval of RBI, may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines. Permission for setting up branch offices is granted by the Reserve Bank of India (RBI):</p> <ul style="list-style-type: none"> • Branch Office is required to register itself with the Registrar of Companies and to comply with certain procedural formalities. • Profits earned by the branches can be freely remitted to Head Office subject to payment of applicable taxes. • Branch Offices are required to submit annual activity report from its CA/CPA to RBI. • For income tax purposes branch is treated as extension of Foreign Company and on income attributable to business in India is taxable as same of a Foreign Company. <p>Transactions between Branch and Head Office are subject to Transfer Pricing Regulations.</p>

Proprietorship

Sole proprietorships begin automatically when a single business owner decides to open a business. There are no documents to file to begin a sole proprietorship.

Sole proprietors have full control over every aspect of their business, whereas partnerships and corporations have to vote on important company issues.

Sole Proprietorship does not involve any complex rules or accounting. Personal assets and business assets are not separated from each other. Any profits from the business are just added to the business owner's income for taxation purposes. Foreign Nationals can not form proprietorship Firm in India.

The above structures can be suggested to be formed on the basis of the need of the Foreign companies or NRI.

Tax Structure in India:

Union Government of India charges two types of taxes direct and indirect. There are few types of taxes which are the subject matter of State Government.

Direct Taxes are charged on the net income/profit. Indirect Taxes are charged by Union Government on imports/production/sales/ services. These are not items of expense but added to the cost of production and recovered from the customers. Indian tax (financial) year starts from 1st April and ends on 31st March of the subsequent year. All tax assesses are required to follow financial year as their tax year but may have different accounting year.

All tax assesses are required to obtain unique tax identification number, called Permanent Account Number (PAN). All resident corporate tax assesses are supposed to file their tax returns by 30th September of every year even in the event of loss. Non-resident corporate are also required to file tax returns if they have business entity or office in India or have income from any Indian source, asset, business, etc. Tax rates in India are on the reducing trend.



Topic	Feature	Remarks
Income Tax	<p>The basic tax rate for an Indian company is 30% which, with applicable surcharge and health & education cess, result in a rate of either 33.38% or 34.944% depending upon the total income.</p> <p>However, after Union Budget 2018, very less companies fall under the tax bracket of 30%. The Union Budget 2018 provided for Corporate Tax Rate to be 25% for companies having turnover upto Rs. 2500 million in the financial year 2016-17. The effective rate for these companies considering applicable surcharge and health & education cess comes to 27.82% or 29.12% depending upon total income.</p> <p>Minimum Alternate Tax rate is 18.5% which becomes an effective rate of either 20.5868% or 21.5488% in case of Indian companies.</p> <p>Dividend Distribution Tax is applicable @ 15% Plus surcharge @ 10% and Health & Education cess @ 4% the net tax payable is 17.16%.</p> <p>Foreign companies that have a Permanent Establishment or Branch/Project Office in India are taxable at higher basic rate of 40% which, with applicable surcharge and health & education cess, resulting in a rate of either 42.432% or 43.68%.</p>	<p>The Companies having effective management or control in India would be deemed to be Indian Company. Earlier the definition was restricted to control or management of its affairs are wholly in India. By the amendment to the scope of resident Indian company has widen. Thus, to be foreign company the affairs and management now is to be wholly outside India.</p> <p>Resident Company : Global Income is Taxable Non Resident Company: Income accrued, arise and received in India is taxed in India</p> <p>Separate taxation regimes exist for the taxation of specific industries or sectors like:</p> <ul style="list-style-type: none"> • non-resident Indians • foreign institutional investors • venture fund investments • shipping businesses • exploration of mineral oils • operation of aircrafts • civil construction <p>Wealth Tax There is no Wealth Tax from April 2015 onwards.</p> <p>Inheritance / gift tax There is no inheritance or gift tax in India.</p>



Goods & Service Tax

Goods and Service Tax (GST) is an Indirect Tax which has replaced many Indirect Taxes in India. GST Act was passed in the Parliament on 29th March 2017. The Act came into effect on 1st July 2017.

Any business in India that supplies goods or services and turnover exceeds the threshold limit of Rs. 2 million (Rs. 1 million for North Eastern and hill states) will have to register under GST. Businesses registered under any of the pre-GST laws like VAT, Excise or Service Tax have to register under GST by default.

Currently, there are three types of GST-

- Central Goods & Service Tax (CGST) which is collected by the Central Government.
- State Goods & Service Tax (SGST) which is collected by State Government.
- Integrated Goods & Service Tax (IGST) which is also collected by Central Government.

Each product has different rate of tax as specified in Schedule of GST. Such tax rate is divided equally between CGST & SGST in case of intra-state transaction and the whole rate is charged as IGST in case of inter-state transaction.



Custom Duty	<p>As per the GST Act, GST will subsume Countervailing Duty(CVD) and Special Additional Duty (SAD). However, Basic Customs Duty (BCD) will continue to do its round in the import bills. BCD has been kept outside the purview of GST and will be charged as per the current law only.</p> <p>Below are some of the implications for imports and importers by virtue of GST implementation in India:</p> <ul style="list-style-type: none"> ● Import as Inter-State Supply – Import into India will be considered as Inter-State supply under GST Act and accordingly will attract IGST along with BCD and other surcharges. ● Import of Services – GST Act accord liability of payment of tax on the service receiver, if such services are provided by a person residing outside India. ● Transaction Value based Valuation Principal - GST Act has borrowed the concept of transaction value based valuation principal from current customs law for charging GST. Under the new regime IGST which subsumes CVD will be charged on transaction value. ● Refund of Duty – Under the new law, tax paid during import will be available as a credit under “Import and Sale” model. 	<p>The amount of GST payable on imported goods would be dependent on the assessable value plus BCD levied under the Customs Act, and any other duty chargeable on the goods.</p> <p>The value of the imported article for the purpose of levying GST Compensation cess would be, assessable value plus BCD levied under the Act, and any sum chargeable on the goods in the same manner as a duty of customs. Thus, the IGST paid would not be added to the value for the purpose of calculating GST Compensation cess.</p>
Other Taxes	<p>Property tax</p> <p>Property Tax is payable under local municipal laws on commercial and residential property.</p>	
Social Security	<p>In India, both the employer and the employee are required to make contributions to Indian Social Security Fund, i.e. Provident Fund (PF) at 12 percent each of the prescribed salary subject to specified conditions under the Indian PF law.</p> <p>International Workers (IW) (other than excluded employees) and their employers are also required to make the contributions</p>	<p>International workers coming from SSA countries can withdraw the accumulated PF balance on cessation of employment in India.</p> <p>However, the IW coming from non SSA countries can withdraw the accumulated PF balance only on retirement from service after attaining 58 years of age or subject to other prescribed conditions.</p>

Visa	The type of visa for the foreign national would depend upon his intention and purpose of visit.	<p>The different types of visa have been illustrated below for reference:</p> <ul style="list-style-type: none"> • Employment Visa (EV) • X Visa (Dependent Visa) • Business Visa (BV) • Project Visa - for foreign national employed in the power and steel sector • Conference Visa • Tourist Visa (Tourist Visa-on-Arrival)
India has signed DTAA with following Countries	Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Botswana, Brazil, Bulgaria, China, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Greece, Georgia, Germany, Hungary, Hashemite Iceland, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Kingdom of Jordan, Kenya, Kyrgyzstan, Kuwait, Libya, Lithuania, Luxembourg, Mongolia, Morocco, Mozambique, Mauritius, Montenegro, Myanmar, Malaysia, Malta, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Philippines, Poland, Portugal, Qatar, Romania, Russia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Serbia, Syria, Sudan, Saudi Arabia, Slovak Republic, Singapore, Slovenia, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Turkmenistan, Turkey, Uganda, Ukraine, United Arab Emirates, Uzbekistan, United States, United Kingdom, Vietnam, Zambia.	<p>India has signed:</p> <ol style="list-style-type: none"> 1. Limited Agreements (dealing with airline or shipping profits) with Afghanistan, Ethiopia, Iran, Lebanon, Pakistan, People's Democratic Republic of Yemen, 2. Limited Multilateral Agreements (entered with a group of countries) with SAARC countries and OECD member countries. Such treaties largely provide additional provisions for cooperation between the countries in the administration of taxes such as exchange of information, assistance in the collection of unpaid taxes etc. 3. Specified Associations Agreement with Taipei 4. Tax Information Exchange Agreements with Bermuda, Bahamas, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey and Liberia. Macau 5. Social Security Agreements - (for the benefit of international workers and their employers) with Belgium, Germany, Switzerland, Luxembourg, France, Denmark, Korea and Netherlands.

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