

SETTING UP BUSINESS IN INDIA



General Aspect

The Indian economy is the world's Seventh-largest by GDP and third-largest by purchasing power parity (PPP) as per World GDP Ranking 2015. 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 is 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>

¹The 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 ac- counts 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/ Representative 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, therefore, earn any income in India. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/ import from/to India and also facilitate technical/financial collaboration between parent company and companies in India.</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. 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. Branch, liaison and project offices are allowed to open non-interest bearing current account in India. Transfer of assets by branch/liaison offices to subsidiaries or other liaison/branch offices 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.

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 percent which, with applicable surcharge and education cess, result in a rate of either 30.90 percent or 32.445 percent depending upon the total income.</p> <p>Minimum Alternate Tax Applicable either 19.06 percent or 20.01 percent in case of Indian companies.</p> <p>Dividend Distribution Tax is applicable @ 15% Plus surcharge @ 10% and Education cess @ 3% the net tax payable is 16.995%.</p> <p>Foreign companies that have a Permanent Establishment or Branch/Project Office in India are taxable at higher basic rate of 40 percent which, with applicable surcharge and education cess, resulting in a rate of either 41.20 percent or 42.02 percent.</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</p> <ul style="list-style-type: none"> • There is no inheritance or gift tax in India.
VAT	<p>At two level</p> <ul style="list-style-type: none"> • Central Sales Tax: 2 percent against C form • Value added Tax at State level 12.5 <p>Registration with respective state sales tax department is require under VAT as well as CST</p>	<p>Each state has different rate of VAT as mention in the schedule of respective State Sales Tax Act</p>
Service Tax	<p>Applicable by Central Government on services rendered except the services covered by negative list or exempt services.</p> <p>Rate of Service tax is 14.50% generally till notification for amendment for the current finance bill applicability by the service tax comes</p>	

Other taxes

Custom duty

Customs duties are levied on the import of most of the goods into India and on the export of specific goods from India. The applicable rates are specified in the Customs Tariff Act, 1975. The Customs Act 1962 is the primary law that regulates customs duties in India. The effective rates of customs duties may vary pursuant to general and/or specific exemption or concession notifications issued by the Government or on the basis of Free Trade Agreements which have been agreed and are in force at the time of import/export (refer to Section 6 below).

Excise duty

Excise duty is levied on goods manufactured and produced in India. The standard Rate of Excise Duty is 12 percent. Certain exemptions and reductions are also available. The duty is generally levied on the basis of value ("transaction value") of the excisable goods. It is applicable on most of the goods and the schedule on which excise duty is applicable is similar to customs HSN list.

Stamp duty

Stamp Duty is imposed on the execution of specified instruments such as sale deeds, indemnity bonds, Memorandum of Association of a company, partnership deeds. The levy is governed by the Indian Stamp Act 1899 or the State Stamp Acts. Some states have enacted separate legislations, whereas some have adopted Indian Stamp Act with or without modifications. The rates vary from state to state.

R&D Cess

Applicable at 5 percent of all payment made towards import of technology and it includes payment made towards cost of drawing and design, payment made to foreign collaborator or any other person in connection with deputation of technical person to India.

Property tax

Property Tax is payable under local municipal laws on commercial and residential property.

Goods and Services Tax (GST)	<p>GST</p> <p>It is most likely that GST bill to be enacted in the Parliament. On GST being enacted, all State and Central Indirect taxes like Service Tax, VAT, Entertainment Tax, Excise Duty and Custom Duty would be covered by GST.</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. 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	<p>The type of visa for the foreign national would depend upon his intention and purpose of visit. The different types of visa</p>	<p>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, Mongolia, Libya, Greece, South Africa, Uganda, Australia, Hungary, Lithuania, Morocco, Spain, Ukraine, Austria, Iceland, Luxembourg, Mozambique, Sri Lanka, United Arab Emirates, Azerbaijan, Indonesia, Mexico, Bangladesh, Ireland, Uzbekistan, Namibia, Sweden, Mauritius, Belarus, Israel, United States, Nepal, Switzerland, Serbia and Montenegro, Belgium, Italy, Finland, Netherlands, Syria, Vietnam, Botswana, New Zealand, Moldova, Japan, Taiwan, Zambia, Brazil, Jordan, Denmark, Norway, Tajikistan, Romania, Bulgaria, Kazakhstan, Egypt, Oman, Tanzania, Russia, Myanmar, Sudan, Saudi Arabia, Faroe Islands, Malaysia, Slovak Republic, Philippines, Thailand, Georgia, China, Korea, Singapore, Poland, Trinidad and Tobago, France, Cyprus, Kuwait, United Kingdom, Portugal, Turkey, Malta, Czech Republic, Kyrgyzstan, Sierra Leone, Qatar, Turkmenistan, Germany, Slovenia.

India has signed:

- (a) Limited Agreements (dealing with airline or shipping profits) with Afghanistan, Ethiopia, Iran, Lebanon, Pakistan, People's Democratic Republic of Yemen,
- (b) 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.
- (c) Specified Associations Agreement with Taipei
- (d) Tax Information Exchange Agreements with Bermuda, Bahamas, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey and Liberia. Macau
- (e) Social Security Agreements - (for the benefit of international workers and their employers) with Belgium, Germany, Switzerland, Luxembourg, France, Denmark, Korea and Netherlands.

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

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