

Doing Business in India

2008



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in India has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at February 2008.

We look forward to helping you do business in India.



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2. Business environment

Geography

India is a natural subcontinent flanked by the Himalayas in the north, the Arabian Sea in the west, the Bay of Bengal in the east and the Indian Ocean in the south. It has a land frontier of 15,200km and a coastline of 7,517km. The Andaman and Nicobar Islands in the Bay of Bengal and Lakshadweep Islands in the Arabian Sea are parts of the territory of India.

Population

India is the second most populous country in the world with 1,130 million people in July 2008 (estimated). The literacy rate is 65% with a great degree of regional variation. Nearly 30% of India's population lives in urban areas and 70% of the India's population lives in rural areas. The country has more than 35 cities with population more than 1 million (2001 census).

Language

Hindi is the official language of the Republic. English the associate official language is widely used for business and is understood almost everywhere in India.

Political set up

India is the largest democracy in the world and has adopted a Parliamentary system of Government with two Legislative Houses. The country is a Union of the National Capital Territory, Delhi, 28 states and six Union Territories. The Central Government has exclusive jurisdiction over all matters of national interest such as defence, communication, banking and currency, international trade and foreign affairs. The State Governments have primary responsibility for matters like law and order, education, health and agriculture.

The Central Government comprises a council of ministers headed by a Prime Minister. The Prime Minister is usually the head of the party, which has the support of a majority in the Parliament. Parliamentary elections are generally held once in five years.

Judiciary

India has a well-established and independent judicial system. The Supreme Court of India is the highest court of appeal at New Delhi and High Courts in

states, along with subsidiary district courts enforce the rule of law and ensure the fundamental rights of citizens, which are guaranteed by the Constitution.

Currency and Banking

The Indian Rupee (INR) is the country's currency.

The country's banking system is controlled and monitored by the Reserve Bank of India (Reserve Bank). The functions of the Reserve Bank are divided into two distinct areas:

- Issue department, which looks after issue of currency;
- Banking department, which regulates and supervises Indian banking.

The commercial banking system in India is fully developed with over 220 commercial banks cumulatively having over 71,000 offices in various parts of the country.

Travel Regulations for Foreign Personnel

Foreigners desirous of visiting India can do so after obtaining 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.

Indian Embassies and Consulates abroad issue visas up to five years with multiple entry option to foreign nationals for business purposes and for studies in India. For employment purpose visas are issued for one year, which can be extended for further stay. A foreign national staying in India for more than 180 days, must obtain a Registration Certificate/Residential permit from the Foreigners Registration offices of the state where he would be stationed.

3. Foreign investment

Economic Factors

The Indian economy is rapidly integrating with the world economy. A foreign investor who wishes to undertake business in India will find tremendous opportunities. The Industrial Policy offers a great deal of freedom to business houses and entrepreneurs to make their own investment decisions.

According to Central Statistical Organisation (CSO) estimates, real Gross Domestic Product (GDP) grew by 8.7% during the financial year 2007-08. The agricultural sector grew by 2.6% and the industrial and services sector grew by 8.6% and 10.6% respectively.

Foreign exchange reserves

India's foreign currency assets have been increasing steadily. Foreign currency reserves (including valuation changes) as at August 1, 2008 were US\$ 305.47 billion.

Foreign Direct Investment

- Continuous liberalization in the Foreign Direct Investment (FDI) policy and simplification of procedures are contributing immensely to attracting increased FDI into India.
- Major share in FDI, country-wise in the last two years are as follows:

<i>Investing country</i>	2007-08		2006 - 07	
	<i>US\$ billion</i>	<i>%</i>	<i>US\$ billion</i>	<i>%</i>
Mauritius	11.10	56.32	6.36	57.98
Singapore	3.07	15.58	0.58	5.29
UK	1.18	5.99	1.88	17.14
USA	1.09	5.53	0.86	7.84
Cyprus	0.83	4.21	0.06	0.55
Total	17.27	-	9.74	-
Total FDI for the year	24.58	-	15.73	-

- Sectors attracting the highest FDI inflows in the last two years are as

follows:

<i>Sector</i>	2007-08		2006 - 07	
	<i>US\$ billion</i>	<i>%</i>	<i>US\$ billion</i>	<i>%</i>
Services (financial and non financial)	6.61	26.91	4.66	29.66
Housing and real estate	2.18	8.87	0.47	2.97
Construction activities (including roads and highways)	1.74	7.09	0.99	6.26
Computer software and hardware	1.41	5.74	2.61	16.62
Telecommunications (radio paging, cellular mobile, basic telephone services)	1.26	5.13	0.48	3.04
Total	13.20	53.74	9.21	58.55
Total FDI for the year	24.60	-	15.70	-

With further liberalization measures across a broad range of sectors in the pipeline and continued investor interest, the inflow of FDI into India is likely to further accelerate.

India's trade

India recorded a 22.6% growth rate in exports in comparison to 2005-06.

With a sustained high growth of export of services, including a growth of 32.1% in 2006-07, export value reached US\$ 76.2 billion in the year 2007-08. Growth has been particularly rapid in the miscellaneous services category consisting of software services, business services, financial services and communication services. Travel services exports grew by 16.2% and transportation by 27.3% in 2006-07.

India's share in world commercial services exports increased from 2.3% in 2005 to 27% in 2006

Imports of commercial services have become important in recent years reaching US\$ 44.4 billion in 2006-07 with a growth of 28.7%.

Business service is the most important category of services in imports, followed by transport and travel. Business services grew by 120.6% in 2006-07.

India's major trading partners

India's major trading partners are:

Country	2006-07 (% of total India trade)
USA	9.8
China	8.3
UAE	6.6
Saudi Arabia	5.1
Singapore	3.7

INDUSTRIAL LICENSING

At present, industrial licensing for manufacturing is required only for the following:

- Industries retained under compulsory licensing under the Industries (Development & Regulation) Act;
- Manufacture of items reserved for small scale industries (SSI) sector by non – SSI units.

An industrial undertaking is defined as a small scale unit if the capital investment in plant and machinery in the manufacturing sector does not exceed INR 50 million (approx. US\$ 125,000) and investment in equipment in the service sector does not exceed INR 20 million (approx. US\$ 50,000).

- When the proposed location attracts locational restrictions. Industrial license is required if the proposed location is within 25 km of the Standard Urban Area limits of prescribed 23 cities having population of 1 million and more, as per the 1991 census.

Industries reserved for the Public Sector

The following industries are reserved for the Public sector:

- Atomic energy
- The substances specified in the schedule to the notification of the Government of India in the Department of Atomic Energy number S.O.212(E), dated March 15, 1995
- Railway transport.

Industries requiring compulsory licensing

The following industries require compulsory license under the IDR Act appropriate authority:

- Distillation and brewing of alcoholic drinks
- Cigars and cigarettes of tobacco and manufactured tobacco substitutes
- Electronic Aerospace and defence equipments: all types
- Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose and matches
- Hazardous chemicals
- Drugs and pharmaceuticals (according to the modified Drug Policy issued in September, 1994, as modified in 1999).

Small Scale Sector

Small scale units can get registered with the Directorate of Industries/District Industries Centre of the State Government. Such units can manufacture any item and are also free from location restrictions. 35 items in various categories have been reserved for the small scale sector – down from 114 in the past one year.

The Government has reserved the following items for the exclusive manufacture in the small scale sector:

- Food and allied industries;
- Wood and wood products;
- Paper products;
- Injection moulding thermo-plastic products;
- Organic chemicals, drugs and drug intermediates;
- Other chemicals and chemical products;
- Glass and ceramics;
- Mechanical engineering excluding transport equipment;
- Electrical machines, appliances and apparatus including electronic

electrical appliances.

Procedure for obtaining Industrial License

Industrial license is granted by the Secretariat for Industrial Assistance (SIA) on the recommendation of the Licensing Committee. Decisions are usually taken within four to six weeks of filing the application.

Policy for Industries exempt from licensing

Industrial undertakings exempt from industrial license are only required to file an Industrial Entrepreneur Memorandum (IEM) in the prescribed format.

Environmental clearances

Entrepreneurs are required to obtain statutory clearances relating to Pollution Control and Environment, as may be necessary, for setting up an industrial project for 31 categories of industries notified by the Ministry of Environment and Forests under the Environmental Protection Act, 1986.

Foreign Investments in India

The Central Government's liberalization and economic reforms programme aims at rapid and substantial growth and integration with the global economy in a harmonised manner. Industrial policy reforms have reduced industrial licensing requirements, removed restrictions on investments and expansion and facilitated easy access to foreign technology and Foreign Direct Investment (FDI).

Prohibited Investments

No person resident outside India can make investment in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not which is engaged or proposes to engage in the following range of activities:

- i. Gambling and lottery related business
- ii. Agriculture and allied activities subject to exceptions
- iii. Real Estate subject to exceptions
- iv. Atomic energy
- v. Retail trading (other than 'single brand' retail trading).

Permitted Investments

In sectors other than those prohibited above, FDI can be made either under the Automatic route or with the specific prior approval of the Ministry of Finance, Foreign Investment Promotion Board (FIPB) subject to FDI Policy.

Procedure under Automatic Route

FDI in sectors/activities in terms of sector specific guidelines (Refer http://siadipp.nic.in/policy/changes/pn7_2008.pdf) fall under the Automatic route and do not require any prior approval either by the Government or the Reserve Bank procedures relating to receipt of funds and issue of shares are to be complied with.

Procedure under Approval Route

FDI in activities not covered under the Automatic route as above, requires prior Government approval. Such proposals are considered by the FIPB. Further, FDI in the following sectors/activities (not covered by the Automatic route) requires prior approval of the FIPB:

- i. Petroleum refining (except for private sector oil refining), Natural gas, LNG pipelines
- ii. Investing companies in infrastructure and services sector
- iii. Defence and strategic industries
- iv. Atomic minerals
- v. Print media
- vi. Broadcasting
- vii. Postal services
- viii. Courier services
- ix. Establishment and operation of satellite
- x. Development of integrated township
- xi. Tea Sector

xii. Asset reconstruction companies.

Applications for all FDI cases, except Non-Resident Indian (NRI) investments, FDI in Export Oriented Units (EOUs) and in retail trading (single branded product) should be submitted to the FIPB Unit, Department of Economic Affairs (DEA) and Ministry of Finance.

Applications for NRI investment, FDI in EOUs and in retail trading (single branded product) cases should be submitted to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy and Promotion (DIPP).

FDI is permitted under the below mentioned categories:

Investment under sector specific guidelines

Investments by a person resident outside India can be made under the Automatic route if the investment falls within the sector specific investment guidelines. FIPB permission is required for investments beyond the sector specific investment guidelines, or where specific approval is required.

Investments in public/private limited companies

An Indian company may issue equity / preference shares or convertible debentures (subject to prescribed pricing guidelines/ valuation norms) to a person resident outside India, within sectoral cap guidelines, subject to compliance with the provisions of the Industrial Policy and Procedures as notified by the SIA in the Ministry of Commerce and Industry, Government of India, from time to time, provided that:

- i. The activity of the issuer company does not require an industrial licence under the provisions of the IDR Act or under the locational policy notified by Government of India under the Industrial Policy of 1991 as amended from time to time.
- ii. the shares or convertible debentures are not being issued by the Indian company with a view to acquiring existing shares of any Indian company.
- iii. Issue of non-convertible, optionally convertible or partially convertible debentures or preference shares are considered as debt and accordingly, guidelines applicable to External Commercial Borrowings (see section II, H, below) apply;
- iv. If the person purchasing the optionally convertible or partially convertible shares proposes to be a collaborator or proposes to

acquire the entire shareholding of a new Indian company, prior permission of Central Government is required if there is a previous venture or tie-up in India through investment in shares or debentures or a technical collaboration or a trade-mark agreement or investment by whatever name called in the same field or allied field in which the Indian company issuing the shares is engaged;

An Indian company may issue equity/preference shares, subject to prescribed pricing guidelines, to a person resident outside India:

- i. Being a provider of technology / technical know-how against royalty / lump sum fees due for payment.
- ii. Against External Commercial Borrowings, subject to exceptions. Provided that the foreign equity after conversion of the royalty / lump sum/external commercial borrowing is within the sectoral cap guidelines.

An Indian company may issue rights and shares to its existing shareholders who are persons resident outside India at a price, which is not lower than that of which the offer is made to resident shareholders, within sectoral cap guidelines and such issue is in compliance with the provisions of the Companies Act and guidelines issued by the Securities Exchange Board of India (SEBI);

- An Indian company may issue Bonus shares to its existing non-resident shareholders and such shares shall be on the same terms and conditions;
- An Indian company may issue preference shares at a coupon rate not exceeding 300 basis points over the prime lending rate of the State Bank of India as at the day of the board of directors meeting held for issue of such shares.

Investment in trading companies

A trading company incorporated in India may issue shares or convertible debentures to the extent of 51% of its capital under the Automatic route to non-residents subject to the condition that remittance of dividend to the shareholders outside India is made only after the company has secured registration as an export/trading/star trading/super trading house from the Director General of Foreign Trade in the Ministry of Commerce.

100% FDI is permitted in the case of trading companies for the following activities:

Automatic route

- Exports;
- Cash and carry wholesale trading.

Approval route

- Bulk imports with export/expanded warehouse sales;
- Imports of other goods or services provided at least 75% is for the procurement and the sale of goods and services among the companies of the same group, and not for third party use or onward transfer/distribution/ sales.

51% FDI is permitted in the case of trading for single brand product retailing. 'Single brand' product retailing would mean products which are branded during manufacturing and sold under the same brand internationally.

The following kinds of trading are also permitted, subject to the provisions of the prevalent Export- Import (EXIM) Policy:

- Companies providing after-sales services, i.e. not trading *per se*;
- Domestic trading of products, permitted at the wholesale level for trading companies that wish to market manufactured products on behalf of Joint Ventures (JVs) in which they have equity participation in India;
- Trading of high-tech items/items requiring specialized after sales service;
- Trading of items for social sector;
- Trading of high-tech, medical and diagnostic items;
- Trading of items sourced from the small scale sector in which, based on technology provided and established quality specifications, a company can market those items under its brand name;
- Domestic sourcing of products for export;
- Test marketing of items for which a company has manufacturing approval, provided the test marketing facilities will be used for a period of two years, and investment in setting up manufacturing facilities starts

simultaneously with test marketing;

- FDI up to 100% for e-commerce activities is allowed. Such companies would engage only in business to business (B2B) e-commerce and not in retail trading.

Investments in Small Scale Industrial (SSI) units

A company which is a SSI unit and which is not engaged in any activity under the prohibited category, may issue equity/preference shares or fully convertible debentures to a foreign investor, to the extent of 24% of its paid-up capital.

Investments for setting up Special Economic Zones (SEZ)/Free Trade Warehousing Zones (FTWZs)

100% FDI is permitted under the Automatic route for setting up SEZs and FTWZs subject to Special Economic Zones Act and the Foreign Trade Policy.

Investments in Export Oriented Units (EOU)/Free Trade Zone (FTZ)/Export Processing Zone (EPZ)

Automatic approval for FDI is permitted in units in EOUs/FTLs/EPZs to the extent of sectoral caps. Automatic approval is granted where:

Activity proposed does not attract compulsory licensing or falls in the services sector except Research and Development, software and IT enabled services;

- Location is in conformity with the prescribed parameters;
- Units undertake to achieve positive net foreign exchange earnings
- An EOU may be shifted to a SEZ with due approval provided the EOU unit has achieved pro-rata obligation under the EOU scheme.

Investments under a scheme of amalgamation/merger

Where the scheme of merger, amalgamation or reconstruction by way of demerger has been approved by a court in India, the transferee company or the new company as the case may be may issue shares to the shareholders of the transferor company resident outside India, subject to the following conditions:

- The percentage of shareholding of a non-resident in the transferee or new company does not exceed the sectoral

- cap;
- The transferor company or the transferee company or the new company is not engaged in any activity prohibited under the FDI policy.

Investments in Global Depository Receipt (GDRs)/American Depository Receipts (ADRs)

Indian companies which are eligible to issue shares to persons resident outside India, under the FDI scheme, are allowed to raise equity capital in the international market by issuing rupee denominated shares to a non-resident depository for the purpose of issuing of GDRs/ADRs with the approval of the Ministry of Finance and in accordance with the scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Deposit Receipt Mechanism) Scheme and the guidelines issued by the Central Government in this regard.

An Indian listed company, which is not eligible to raise funds from the Indian capital market including a company restrained by the SEBI to do so, is not eligible to issue GDRs/ADRs. Unlisted companies, which have not accessed the GDR/ADR route for raising capital, would require prior or simultaneous listing in the domestic market. Unlisted companies which have already issued GDRs/ADRs, have to list in the domestic market on making profit or within three years of such issue of GDRs/ADRs, whichever is earlier.

GDRs/ADRs are valued as per guidelines and issued on basis of the ratio worked out by the Indian company in consultation with the Lead Manager. Proceeds from the issue, have to be kept abroad, pending utilisation. Such proceeds may be invested as per guidelines until such time.

There is no restriction on the number or monetary limit of GDRs/ADRs/FCCBs that can be floated by an Indian company in a financial year. A company engaged in the manufacture of items covered under the Automatic route, the FDI of which after a proposed issue of GDRs/ADRs/FCCBs is likely to exceed the sectoral caps, would need to obtain prior government clearance through the FIPB before seeking final approval from the Ministry of Finance.

There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and the stock markets. Under the two way fungibility scheme, an Indian stock

broker registered with SEBI can purchase shares of an Indian company from the market for conversion to GDRs/ADRs based on instructions from overseas investors. Reissue of GDRs/ADRs would be permitted to the extent of GDRs/ADRs which have been redeemed into underlying shares and sold in the Indian market.

An Indian company can also sponsor an issue of GDR/ADR by offering its resident shareholders a choice to submit their shares back to the company so that consequently, GDRs/ADRs may be issued abroad.

An Indian company issuing GDRs/ADRs is required to furnish to the Reserve Bank, full details of such issue, within 30 days of closing of the issue.

Investments by Non-Resident Indians (NRIs)

The Indian government actively encourages investment in India by Indians and persons of Indian origin resident abroad. NRIs are those who come under any of the following categories:

- Indian citizens who stay abroad for employment or for carrying on business or vocation or any other purpose in circumstances indicating an indefinite period of stay outside of India;
- Government servants deputed abroad on assignments with foreign governments or regional/international agencies like the World Bank, the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF) and the World Health Organisation (WHO);
- Officials of State Government and public sector undertakings deputed abroad on temporary assignments or posted to their branches or offices abroad.

NRIs become residents of India only when they return to India for employment or for carrying on any business or vocation or for any other purpose indicating an indefinite stay in India, but not when they come back on short visits for holidays or business.

Facilities available to NRIs are also made available to non-resident foreign citizens of Indian origin.

A person is deemed to be a person of Indian origin (PIO) if s/he at any time held an Indian passport, or if s/he, or either of his/her parents, or any of his/her grandparents was an Indian and a permanent

resident in India at any time. A spouse of a citizen of India or of a PIO is deemed to be of Indian origin though of non-Indian origin.

Various schemes are available to NRIs and PIOs for investing in securities on repatriation/non-repatriation basis.

Investment in non-corporate business

NRIs/PIOs are permitted to invest in a partnership firm/proprietorship concern subject to the following conditions:

- Amount invested is received either by inward remittance through normal banking channels or out of the funds in the NRE/FCNR/NRO account maintained with an authorised dealer/authorised bank in accordance with relevant regulations;
- The firm or the proprietary concern is not engaged in any agricultural/ plantation activity or real estate business, i.e. dealing in land and immovable property with a view to earning profit or income there from, or print media sector;
- The amount invested would not be eligible for repatriation outside India;
- NRIs/PIOs are required to obtain permission of the Reserve Bank for investment in a partnership firm/sole proprietorship concern with repatriation benefits.

A person resident outside India, other than NRIs/PIOs, require prior permission of the Reserve Bank for investment in a firm/sole proprietorship/association of persons. Such applications are considered in consultation with the Central Government.

Investments by Foreign Institutional Investors (FIIs)

An FII is defined as an institution established or incorporated outside India for making investments in Indian securities and includes a sub-account of an FII.

The FIIs who have obtained registration from SEBI and Reserve Bank are permitted to invest on full repatriation basis under the Portfolio Investment Scheme in the Indian Primary and Secondary Stock Markets (including OTCEI – the Over the Counter Exchange of India) subject to the following limits:

- A single FII or an approved sub-account of an FII cannot

hold more than 10% of the paid up capital of an Indian company, or 10% of the paid-up value of each series of convertible debentures issued by an Indian company.

- The total holdings of all FIIs in any company will be subject to a ceiling of 24% of its total issued capital of the company or paid-up value of each series of convertible debentures. The limit of 24% may be increased up to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned, by passing a resolution of its board of directors followed by the passing of a special resolution to that effect by the shareholders of the company in a general meeting.
- A domestic asset management company or portfolio manager registered with the SEBI as an FII for managing the fund of a sub-account, can make investments on behalf of a foreign citizen resident outside India or a body corporate registered outside India, subject to limits set out and certain other conditions.
- FIIs are not permitted to invest in Asset reconstruction companies (see (vii), above), or in any industry/activity in the prohibited category.
- FIIs registered with the SEBI and sub-accounts of such FIIs are permitted to short sell, lend and borrow equity shares, subject to conditions prescribed by the Reserve Bank and SEBI/other regulatory agencies, from time to time.
- Banks maintaining accounts of FIIs can provide forward cover with the INR as one of the currencies, subject to conditions.
- An FII is permitted to purchase shares or convertible debentures of an Indian company through private placement/arrangement subject to the limits specified above and prescribed conditions.
- FIIs may invest through the equity or debt route. Under the equity route FIIs can make either 100% investment in the equity related instruments or up to 30% in the debt instruments and 70% in equity instruments. An FII may form a 100% debt fund, which has to be registered with SEBI. Investment in debt securities are subject to limits stipulated by SEBI, if any.
- FIIs can also invest in exchange traded derivative

contracts traded on a recognised stock exchange, tender their securities directly in response to an open offer made in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations and lend securities through an approved intermediary in accordance with the stock lending scheme of SEBI. FIIs are also permitted to trade in all exchange traded derivative products within specified trading position limits. FIIs are allowed to offer foreign sovereign securities with AAA rating as collateral to recognised stock exchanges in India for their transactions in the derivatives market.

The consideration for the purchase must be remitted by inward remittance from abroad or through normal banking channels or out of funds held in an account maintained in accordance with the regulations.

FIIs can also invest in the following:

- Dated government securities
- Treasury bills
- Listed non convertible debentures/bonds issued by domestic companies
- Units of domestic mutual funds
- Investment in perpetual Debt Instruments and Debt Capital Instruments issued by banks in India.
- The above can be acquired directly from the issuer of such securities or through a recognized stock exchange, subject to notified limits and prescribed conditions
- Specified reporting requirements are to be complied with in respect of purchase/sale transactions undertaken by FIIs.

xii) Investments in immovable property in India

Acquisition of Immovable property for carrying on a permitted activity:

- A person resident outside India who has a branch, office or other place of business, (excluding a liaison office) in India for carrying on his business activity, with requisite approvals wherever necessary, is eligible to acquire immovable property in India which is necessary for or incidental to carrying on such activity provided that applicable laws are duly complied with. The entity/concerned person is required to file a declaration with RBI within 90 days from the date of such acquisition. The non-resident is eligible to transfer by way of mortgage the said immovable property to an authorised dealer bank as a security for any borrowing.

- Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan shall not acquire or transfer immovable property in India, other than lease, not exceeding five years without prior permission of the Reserve Bank.
- Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India.
- Foreign nationals of non-Indian origin who have acquired immovable property in India with the specific approval of the Reserve Bank cannot transfer such property without prior permission of the Reserve Bank.
- Agricultural land/plantation/farmhouse:
 - NRIs and PIOs cannot purchase agricultural land, plantation or a farmhouse.
 - NRIs and PIOs may transfer agricultural land/ plantation property/farmhouse in India (acquired by way of inheritance) by way of sale or gift to Indian citizens permanently residing in India. At present repatriation of sale proceeds is not permissible.
- Immovable property (other than Agricultural land/ plantation/ farmhouse):
 - An NRI can acquire by way of purchase, gift or inheritance, immovable property and transfer immovable property to an NRI/PIO or a person resident in India.
 - A PIO can acquire by way of purchase, gift or inheritance and transfer immovable property by way of sale to a person resident in India or by way of gift to an NRI/PIO or a person resident in India.
- Repatriation of sale proceeds:
In the event of sale of immovable property in India by a NRI/PIO, the authorised dealer will allow repatriation of sale proceeds outside India provided:
 - The immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of Regulations framed under the Foreign Exchange Management Act (FEMA).
 - The amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking

channels or out of funds held in the FCNR Account or (b) the foreign currency equivalent as on the date of payment, of the amount paid, where such payment was made from the funds held in the NRE account for acquisition of the property.

- In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- In the case of sale of immovable property purchased out of Rupee funds, authorised dealers may allow the facility of repatriation of funds out of balances held by NRIs/PIO in their NRO accounts upto US\$ 1 million per calendar year, subject to furnishing an undertaking by the remitter and a certificate from a Chartered Accountant.

xiii) Investments under Employee Stock Option Plan (ESOP) scheme

A listed Indian company may issue shares under the ESOP Scheme to its non-resident employees or non-resident employees of its joint venture or wholly owned subsidiary abroad, either directly or through a trust, subject to the following conditions:

- The scheme has been drawn in terms of regulations issued by the SEBI;
- Face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5% of the paid up capital of the issuing company;
- If the company is not listed, the provisions of the Companies Act, will have to be followed;
- ESOPs can be issued to non-resident employees, other than citizens of Pakistan ESOPs can be issued to citizens of Bangladesh with the prior approval of the FIPB;
- The issuer company is required to report details of such issues to the concerned Regional office of the Reserve Bank, within 30 days from the date of issue of shares under the ESOP.

Foreign Technology Agreements

Automatic permission is granted for payments under foreign technology collaboration by Indian companies where:

- There has been a foreign technical collaboration wherein technology has been transferred, for example:
 - A lump sum payment for technical know-how fees is up to US\$ 2 million.
 - A royalty payment does not exceed 5% for domestic sales

and 8% for exports, without any restriction on the duration of royalty payment.

- In case of transfer of rights to use trademarks and brand:
 - Royalty up to 2% of export sales and 1% for local sales for use of trademarks and brand name even if there is no transfer of technology.
 - In case of technology transfer payment of royalty subsumes the payment of royalty for use of trademark and brand name of the foreign collaborator.

Royalty payment in other cases requires prior Government approval, through the Project Approval Board (PAB) where only technology transfer is proposed and through the FIPB, where both financial and technical collaboration are proposed.

Direct investments outside India

Investments outside India are permitted under the below mentioned categories under the Automatic route, except direct investment in a foreign entity engaged in real estate business or banking business. The Automatic route facility is not available for investments in Pakistan.

Investment in a Joint Venture (JV) or Wholly Owned Subsidiary (WoS)

Investments can be made subject to conditions, by a company or a body created under an Act of Parliament or a partnership firm (the Indian entity) in an overseas JV/WoS engaged in a bonafide business activity up to 400% of the net worth of the Indian entity subject to conditions.

The Indian entity may extend a loan/guarantee to an overseas concern only in which it has equity participation. The Indian entity may offer any form of guarantee, subject to conditions.

The Indian entity should not be on the Reserve Bank's caution list or list of defaulters.

Where the investment is a partial or full acquisition in an existing foreign company, valuation of the shares of the foreign company shall be as under:

- Where investment is by way of remittance and is more than US\$ 5 million, by a merchant banker registered with

SEBI or an investment banker registered with the appropriate authority in the host country;

- In all other cases, by a Chartered Accountant or a Certified Public Accountant.

In case of investment by way of swap of shares, the valuation of shares will have to be made by a Merchant banker registered with SEBI or an Investment banker outside India, duly registered with the appropriate authority, subject to the prior approval of the FIPB.

Investments in JV/WoS abroad are permitted under the Automatic route through the medium of a Special Purpose Vehicle (SPV), subject to conditions.

An Indian entity is also permitted to acquire shares of a foreign company engaged in a *bonafide* business activity in exchange of GDRs/ADRs issued to the latter, subject to specified provisions.

Investments in JV/WoS are required to be reported to the Reserve Bank in the prescribed form within 30 days of the transaction.

Investment in unincorporated entities overseas in the oil sector

Indian companies are permitted to invest in unincorporated entities overseas in the oil sector under the Automatic route upto 400% of their net worth provided the proposal has been approved by the competent authority and is duly supported by certified copy of the resolution of the Board of Directors approving such investment. Investment in excess of 400% of the net worth of an Indian company shall require prior approval of the Reserve Bank.

Investments in the energy and natural resources sector

The Reserve Bank will consider applications for investment in JV/WoS overseas in the energy and natural resources sectors (e.g. oil, gas, coal and mineral ores) in excess of 400% of the net worth of the Indian companies as on the date of the last audited balance sheet.

Investment in equity/bonds of an overseas listed company

A listed Indian Company may invest up to 50% of its net worth in shares and rated bonds/fixed income securities rated not below investment grade by an accredited agency, issued by listed overseas companies.

Resident individuals may invest in:

- Equity shares;
- Rated bonds/fixed income securities issued by overseas companies, at limits as specified in the Liberalised Remittance scheme, which is currently US\$ 200,000 in a calendar year.

Investment by mutual funds

Mutual Funds registered with SEBI may invest upto a ceiling of US\$ 7 billion in specified investments.

Investment by Domestic Venture Capital Funds (DVCF)

DVCFs registered with SEBI may invest equity and equity linked instruments of off- shore venture capital undertakings, subject to specified limits.

Investment in the financial services sector

Investments can be made by an Indian entity in any entity outside India engaged in financial services activities subject to provisions.

Prior approval of the Reserve Bank

Prior approval of the Reserve Bank is required in all other cases of direct investment abroad. For the purpose, an application is required to be made by the Indian entity to the Reserve Bank through their bankers, in the prescribed form together with the necessary documents.

Overseas Investments by proprietorship concerns

Proprietorship concerns and unregistered partnership firms are allowed to set up a JV/WoS outside India with prior approval of the Reserve Bank, subject to satisfying certain eligibility criteria.

Funding of investments

Investments may be funded out of one or more of the following sources:

- Drawal of foreign exchange from an authorised dealer (bank)
- Capitalization of exports
- Swap of shares
- Proceeds of ECBs/FCCBs
- Exchange of GDRs/ADRs
- Balance in EEFC account
- Proceeds of GDR/ADR.

Transfer/pledge of shares

Transfer of shares in JV/WoS is subject to guidelines specified by the Reserve Bank.

Hedging of overseas direct investment

Indian entities having overseas direct investments are permitted to hedge the exchange risk arising out of such investments, subject to certain conditions.

BUSINESS FORMS

Foreign investors may establish a business presence in India through:

- A branch/liaison office
- A project office

- Incorporating a company with limited liability in either of the following ways:
 - JV companies in collaboration with an Indian partner and/or by making a public offering.
 - Incorporating a wholly owned company with 100% foreign equity.

Branch/Liaison office

Branch office

Foreign companies engaged in manufacturing and trading activities can open Branch offices to:

- Represent the foreign company in India in various matters such as acting as buying/selling agents;
- Undertake export and import trading activities;
- Render professional or consultancy services;
- Carrying out research work, in which the parent company is engaged;
- Render services in information technology and development of software in India;
- Render technical support to the products supplied by the parent/group companies;
- Promote possible technical and financial collaborations between Indian and foreign companies.

A Branch office is not permitted to carry out any manufacturing or processing activities in India, directly or indirectly. Branch offices may acquire property only for their own use and to carry out the permitted activities.

Liaison office

Foreign companies engaged in manufacturing/trading activities can open Liaison offices to:

- Represent in India, the parent company/group companies;
- Promote export/import from/to India;
- Promote technical/financial collaborations between parent/group companies and companies in India;
- Act as a communication channel between the parent company and Indian companies.

Permission to set up Liaison offices is granted for an initial period of three years which can be further extended from time to time. Expenses of a Liaison office can be met only out of the remittances from the Head Office. The role of such offices is restricted to collecting information about potential marketing opportunities and providing information regarding the parent company and its products and services to potential Indian customers.

Applications and approvals

Applications for establishing a Branch/Liaison office is required to be routed through the nominated bankers, in the prescribed form along with specified documents.

Project office

Setting up

Reserve Bank has granted general permission to foreign companies to establish Project offices in India, provided they have secured a contract from an Indian company to execute a contract in India and specified conditions are fulfilled.

Reserve Bank approval is required if the specified criteria are not met.

On going compliances

The offices as above are required to fulfil annual compliances as laid down by the Reserve Bank in the prescribed form and manner.

Closure

At the time of winding up/closure of the offices, specified documents

and confirmations, certified by the officers and the Chartered Accountants, are required to be filed with the Reserve Bank.

Limited Liability Company (LLC) – appropriate entity

The most appropriate form of business enterprise for a foreign investor is a limited liability company. Sole proprietary and partnership are the other business forms prevalent in India but due to unlimited liability they are not normally found to be suitable by overseas investors.

Under the present policy of the government, all companies must be incorporated in India under the Companies Act, 1956 to carry on any business/service activities in the country.

Indian companies are classified into two categories – ‘public’ and ‘private’ companies. A private company is one which:

- Has a minimum paid-up capital of INR 100,000
- Restricts the right to transfer its shares
- Limits the number of its members to 50
- Prohibits invitation or acceptance of deposits from persons other than its members, directors or their relatives and prohibiting public subscription to its share capital.

A company is a public company provided it has a minimum paid-up capital of INR 500,000 or is a private company which is a subsidiary of a public company and is a company other than a private company as defined above.

The Companies Act has wider regulations for public companies in respect of management, borrowings and dealings with members and creditors due to greater public participation.

Company formation

The formation of a company requires:

- Selection of a name (which has to be approved by the Registrar of Companies);
- Determination of the state in which the registered office will be situated;

- Drafting of a Memorandum of Association which mention the objects for which the company is formed and its capital, and the Articles of Association which set out the regulations for the company's internal management;
- Preparation of documents for submission to the Registrar of Companies for registration along with the requisite fees.

The Registrar's office verifies the documents submitted and ascertains that all the formalities necessary for the formation of the company have been complied with. The Registrar then certifies under his hand that the company is formed. The company thereon emerges as a legal entity with limited liability. The entire process of registering a company is now done electronically.

The Articles of Association are the internal regulations for the conduct of the company's affairs. The Articles cannot go beyond the scope of the memorandum.

Issue of shares

The issue of shares requires compliance with various provision of the Companies Act. A prospectus is a document which offers to the public the shares of a company, requires detailed disclosure with regard to the company, its directors, its past working and future projections, contracts which it has entered into, and other details. A company can issue shares to the public only after a copy of the prospectus has been filed with the Registrar. At least 90% subscription of the public issue must be collected before allotment.

An Indian company may issue 'sweat equity shares', i.e. shares issued by a company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, if approved by its shareholders, subject to certain conditions. Companies can also issue shares under a Scheme, subject to the SEBI guidelines.

An Indian company may buy back its own shares if authorised by its Articles of Association and approved by its shareholders, subject to certain conditions.

A public limited company may issue shares with differential rights as to voting, dividend or otherwise subject to certain conditions.

A company can reduce its share capital with the prior approval of the

High Court and subject to the conditions prescribed under the Companies Act.

Directors and management

The Companies Act, which governs the functioning of companies, requires a company to have at least two directors, if a private company, or three directors in the case of public company.

Non-resident directors, other than a non-resident Managing Director, can serve on the Board of an Indian company. Under the Companies Act, one-third of the directors need not retire by rotation and therefore, it is not unusual for the foreign investor to have the right to nominate directors who need not retire by rotation.

Provisions also exist in the Companies Act for the appointment of alternate directors to act in place of the original director. It is common practice for the foreign investor to have Indian legal and accounting professionals to act as alternate directors as their nominees to protect the foreign investor's interest in Indian companies.

Every director of a company must obtain a Director Identification Number (DIN) by making an application in the prescribed form and supported by specified documents duly attested as instructed. Such application is required to be made electronically and once allotted, the DIN is required to be used in all necessary compliances under the Companies Act.

Provisions for listed companies

Listed companies are required to comply with the following conditions/fulfil following requirements:

- Enter into a Listing Agreement with the concerned stock exchanges.
- Publish quarterly/half yearly financial results accompanied by a limited review report by the statutory auditors.

Annual certification

Every company which is not required by law to employ a whole time company secretary and having a paid-up capital in excess of INR 1 million but less than INR 20 million, is required to obtain a Secretarial Compliance Certificate, from a secretary in whole time practice, certifying compliance with prescribed requirements under the Companies Act.

Finance

Currency and banking

The Indian rupee is the country's currency.

The banking system is controlled and monitored by the Reserve Bank.

The functions of the Reserve Bank are divided into two distinct areas:

- issue department which looks after the issuance of currency; and
- banking department which regulates and supervises Indian banking. Commercial banks, co-operative banks and regional rural banks broadly make up the banking system in India. Public sector banks have more branches in rural and semi-urban centres compared with private banks. Foreign banks, on the other hand, have all of their branches in urban or metropolitan centres.

Capital issue

Capital issues by companies are supervised by the SEBI, which is empowered to regulate the financial structure of joint stock companies and acts as a safeguard for the investing public. Minimum limits for promoter's contribution are laid down for all issues of capital to the public.

Stock market and listing requirements

India has a vibrant capital market comprising 23 stock exchanges with more than 10,000 listed companies. SEBI monitors the stock market in India.

The OTCEI operates as an alternative to the stock market. OTCEI allows listing of companies with minimum paid up capital of INR 3 million and minimum offer to the public should be 25% of the issued capital or INR 2 million worth of shares in face value.

The National Stock Exchange has been set up in Mumbai to provide online nationwide trading facilities for shares and for the wholesale debt and capital markets.

Venture Capital (VC)

VC is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors.

These funds are regulated by SEBI Regulations.

Credit rating

Credit rating is a requirement for debenture issue, fixed deposits and commercial paper programmes. Credit rating is presently done by six agencies.

Mutual funds

The Indian mutual fund industry is at a stage of growth at this point in time. The aggregate assets under management by mutual funds as at March 2008 are US\$ 134.70 billion. The total assets under management by the entire mutual fund industry constitutes around 18% of the deposits held by the banking industry.

External Commercial Borrowing (ECB)

ECB refers to commercial loans in the form of bank loans, buyer's credit, supplier's credit, securitised instruments availed from non-resident lenders with a minimum average maturity of three years. The policy for ECBs is also applicable to raising funds through issue of FCCBs. FCCBs are to be issued in accordance with the issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, and subscribed to by non-residents.

ECB can be accessed under the following routes:

- Automatic route
- Approval route.

Automatic route

- Eligible borrowers:
 - Corporates registered under the Companies Act, except financial intermediaries (such as banks, financial institutions, housing finance companies and non banking financial companies). Individuals, trusts and non profit organisations cannot raise ECBs.
 - Units in SEZ.

- Maximum amount of ECB that can be raised by a corporate in a financial year is US\$ 500 million, or its equivalent subject to:
 - ECB with minimum average maturity of three years for an amount up to US\$ 20 million, or its equivalent.
 - ECB with minimum average maturity of five years for an amount above US\$ 20 million and up to US\$ 500 million, or its equivalent.

- ECB up to US\$ 20 million can have call/put option provided the minimum average maturity of three years is complied before exercising call/put option.

Approval route

- Eligible borrowers:
 - financial institutions dealing exclusively with infrastructure or export finance;
 - specified banks and financial institutions;
 - NBFCs raising ECBs with a minimum average maturity of five years;
 - issue of FCCBs by Housing Finance Companies satisfying certain criteria;
 - special purpose vehicles or any other entity notified by the Reserve Bank, set upto finance infrastructure companies/projects;
 - corporates engaged in the industrial and infrastructure sector can avail of ECB for meeting Rupee expenditure for permissible end uses;
 - Non-Government Organisations (NGOs) engaged in micro finance activities;
 - corporates in the service sector, such as hotels, hospitals and software companies can avail of ECB for import of capital goods;
 - cases falling outside the purview of the Automatic route.

- Corporates can avail of ECB of an additional amount of US\$ 250 million with average maturity of 10 years under the Approval route, over and above the limit of US\$ 500 million under the Automatic route.

All-in cost ceilings

All-in cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian rupees.

Minimum average maturity period	All-in cost ceilings over month LIBOR
Three years and up to five years	200 basis points
More than five years	350 basis points

Recognised Lenders

Borrowers can raise ECB from internationally recognised sources such as:

- International banks
- International capital markets
- Multilateral financial institutions
- Export credit agencies
- Suppliers' of equipments
- Foreign collaborators
- Foreign equity holders.

End use restrictions

The Reserve Bank has set out end use restrictions of the funds raised under the ECB route as follows:

- Import of capital goods by new or existing production units, in the industrial and infrastructure sector.
- Investment in overseas JVs/WoS subject to guidelines.

ECB proceeds cannot be used for:

- On lending
- Investment in the capital market
- Acquisition of a company
- Real estate
- Working capital
- General corporate purposes
- Repayment of existing Rupee loans.

ECB of more than US\$ 50 million (US\$ 100 million for borrowers in the infrastructure sector) is permitted only to meet the foreign currency expenditure for permissible end use and the funds are required to be parked overseas and not remitted to India. ECB up to US\$ 50 million (US\$ 100 million for borrowers in the infrastructure sector) for permissible end use Rupee expenditure would require approval from the Reserve Bank under the Approval route.

Prepayment

Prepayment of ECB up to US\$ 500 million may be allowed by the authorised dealer without prior approval from the Reserve Bank. However, the stipulated minimum average maturity period, as applicable for the loan, must be complied with. Prepayments in excess of US\$ 500 million require prior Reserve Bank approval.

Conversion of ECB into equity share capital

Conversion of ECB into equity share capital of the borrower company is permitted subject to the following conditions:

- The activity of the Indian company is covered under the Automatic route for FDI or FIPB approval for foreign equity participation has been obtained by the company;
- The foreign equity holding after such conversion of debt into equity is within the sectoral cap guidelines;
- Pricing of the shares is as per the relevant guidelines.

Conversion of ECB into equity is required to be reported to the Reserve

Bank as per the procedure laid down in this regard.

Special Investment Programmes

Special schemes are available for setting up export oriented units for the electronics/IT sector. Various incentives and concessions are available under these schemes. The schemes are:

- Export Oriented Units (EOU)/Electronics Hardware Technology Parks (EHTP)/Software Technology Parks (STP) scheme;
- Special Economic Zones (SEZ) scheme.

Salient features of the above schemes are given in **Appendix I**.

Establishment of branch offices/units in SEZ

The Reserve Bank has given general permission to foreign companies to establish branch offices/units in SEZ for undertaking manufacturing and services activities subject to the following conditions:

- Such units are functioning in those sectors where 100% FDI is permitted;
- Such units comply with Part XI of the Indian Companies Act;
- Such units function on a stand alone basis.

4. Setting up a Business

Reserve Bank of India

The Reserve Bank of India (Reserve Bank) was established on April 1, 1935 in accordance with the provisions of the Reserve Bank of India Act. The objectives are to regulate the issue of bank notes, regulate the banking industry keeping reserves with a view to securing monetary stability in India, and to operate the currency and credit system of the country to its advantage.

Securities and Exchange Board of India

The Securities and Exchange Board of India (SEBI) regulates and promotes an orderly development of the capital market in India.

SEBI has three primary functions:

- To deal with all matters relating to the development and regulation of the securities market and investor protection, and advise government on these matters;
- To prepare comprehensive legislation for the regulation and development of the securities market;
- To carry out such functions as may be delegated by the Central Government for the development and regulation of the securities market.

Regulations and guidelines have been issued by the SEBI which are available on the website <http://sebi.gov.in>.

Among the key SEBI Regulations are the following:

SEBI Insider Trading Regulations

The SEBI (Prohibition of Insider Trading) Regulations incorporate several disclosure and other reporting requirements in order to curb insider trading, price rigging, unfair practices, etc. by those in possession of certain vital and confidential information.

All listed companies must frame a Code of Internal Procedures and Conduct on the lines of the specified model code to prevent insider trading violation of which will lead to disciplinary action by the company.

SEBI Takeover Regulations

The Takeover Regulations apply when there is an acquisition of equity shares/ voting power/control of a listed company in excess of the specified limits. Based on the limits, the Acquirer has to comply with reporting requirements or acquire shares from the public and must comply with the other conditions as prescribed by SEBI. Both the Acquirer and the Target Company are required to follow disclosure requirements as prescribed by the Regulations.

Dematerialisation of securities

Issue and allotment of shares in a Public/Rights/Offer for sale must be only in dematerialised (demat) form.

Currently, there are two Depositories and several depository participants associated with one or both of these Depositories. A company whose securities are to be dematerialised must execute an agreement with the Depository.

A shareholder is required to open a separate demat account with the depository participant for every combination of shareholding. Almost all listed securities are now compulsorily traded in the demat form.

Insurance Regulatory and Development Authority of India (IRDA)

The main objective of IRDA is to protect the interests of the policy holders, and to regulate, promote and ensure orderly growth in the insurance industry.

Telecom Regulatory Authority of India (TRAI)

The TRAI was formed with a view to providing an effective regulatory framework and adequate safeguards to ensure fair competition and protection of consumer interests. TRAI's mission is to create and nurture conditions for the growth of telecommunications including broadcasting and cable services in the country in a manner and at a pace which will enable India to play a leading role in the emerging global information society.

Monopolies and Restrictive Trade Practices Act and the Competition Act

The Monopolies and Restrictive Trade Practices Act (MRTP) is an important piece of economic legislation, which in certain respects is similar to the anti trust legislation in other countries and is meant to

control unfair and/or restrictive business practice.

The Competition Act will replace the MRTP Act, when notified by the Central Government.

The Competition Act has been enacted to establish a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of the consumers and to ensure freedom of trade activity carried on in markets in India.

Companies Act and Corporate Governance

The Companies Act regulates the formation, financing, functioning and winding up of companies. The Companies Act prescribes regulatory mechanism regarding all relevant aspects including organisational, financial and managerial aspects of companies. In the functioning of the corporate sector, although freedom of companies is important, protection of investors and shareholders is equally important. The main objects of the Companies Act are:

- To protect the interests of the large number of shareholders as there exists separation of ownership from management in a company;
- To safeguard interests of creditors;
- To help development of companies on healthy lines;
- To help attainment of the social and economic objectives of the Government of India;
- To equip the government with adequate powers of intervention, in the affairs of a company in public interest as prescribed by law to protect the interest of all stakeholders.

Synergies exist between the Companies Act and the regulations issued by the SEBI in common matters relating to governance, management, issue of securities, investor protection, etc.

Specifically, the Companies Act inter alia provides for the following:

- Incorporation of companies and related matters;
- Issue of prospectus and other matters relating to issue of shares and debentures and miscellaneous provisions relating thereto;

- Registration of charges;
- Management and administration, which deal with the following matters:
 - registered office
 - commencement of new businesses
 - register of members and debenture holders, including foreign registers
 - meetings and proceedings.
 - managerial remuneration
 - dividend payments.
 - accounts and audit
 - investigation of the affairs of a company
 - appointment of the Board of Directors, conduct of Board meetings, powers of the Board, disclosures of interest, remuneration and compensation, etc.
- Provisions relating to company secretaries and managers;
- Powers of the Central Government to remove managerial personnel on recommendation of the Tribunal;
- Arbitration, compromises, arrangements (including amalgamations) and reconstructions;
- Prevention of oppression and management;
- Revival and rehabilitation of sick industrial companies;
- Winding up proceedings;

- Incorporation of Producer companies and related matters - a Producer company is a company engaged in agriculture or any other primary activity or service which promotes the interests of farmers or consumers;
- Companies incorporated outside and carrying on business in India.

Corporate governance

With a view to encourage companies to adopt good corporate governance practices leading to more transparent, ethical and fair business conduct, following provisions have been made:

- Director's Responsibility Statement to be included in the Director's Report;
- Constitution of an Audit Committee;
- Debarring a person to act as a Director of a Company if default in filing Annual Returns, Accounts, or repayment of deposits/debentures/interest/ dividend has taken place;
- Appointment of a Director in maximum 15 companies;
- Clause 49 of the Listing Agreement with Stock Exchanges providing for promoting and raising the standards of corporate governance in companies.

Foreign Exchange Management Act

The Foreign Exchange Management Act (FEMA) was enacted with the objective of facilitating external trade and payments and promoting the orderly development and maintenance of foreign exchange markets in India.

As the FEMA regulates transactions between residents and non-residents, residential status is of utmost importance. Residential status under the FEMA is determined by the intent of the person to stay in India for an indefinite period of time as against physical stay.

A "capital account transaction" is a transaction that alters the assets and liabilities, including contingent liabilities outside India, of persons resident in India, or assets and liabilities in India, of persons resident outside India, and includes transactions specifically referred to in the FEMA.

The Reserve Bank has issued Regulations to specify:

- Any class or classes of capital account transactions that is permissible;
- The limit up to which foreign exchange will be admissible in the case of such transactions

However, the Reserve Bank is not permitted to impose any restriction on the drawing of foreign exchange for payments due on account of the amortisation of loans or for the depreciation of direct investments in the ordinary course of business.

The Reserve Bank has issued Regulations which prohibit, restrict and regulate the following:

- Transfer or issue of any foreign security by a person resident outside India;
- Transfer or issue of any security by a person resident outside India;
- Transfer or issue of any security or foreign security by any branch, office or agency in India on behalf of a person resident outside India;
- Any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- Any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- Deposits between persons resident in India and persons resident outside India;
- The export, import or holding of currency or currency notes;
- The transfer of immovable property outside India, other than by way of a lease exceeding five years, by a person resident in India;
- The acquisition or transfer of immovable property in India, other than by way of a lease exceeding five years, by a person resident outside India;

- The giving of a guarantee or surety with respect to any debt, obligation or other liability incurred;
- The establishment of a branch, office or other place of business, by a person resident outside India for carrying out any activity.

A “current account transaction” is a transaction other than a capital account transaction. The Central Government has framed Rules under which current account transactions have been broadly classified as:

- Transactions that are prohibited
- Transactions that require the prior approval of the Central Government
- Transactions exceeding specified monetary limits, which require prior Reserve Bank approval.

H. INTELLECTUAL PROPERTY RIGHTS

Intellectual property (IP) refers to the creation of mind, i.e. invention, industrial designs for articles, literary and artistic work, names and symbols used in commerce. The law governing intellectual property rights is an umbrella term which encompasses within its fold, various statute laws. Important among the IP laws are:

The Patents Act

Patent is a legal right granted by the government that permits the owner to prevent others from making, using or selling an invention and is granted for a period of 20 years from the date of filing the application.

The Copyright Act

The Act provides for the registration of works. However, non-registration does not generally affect the rights of the owners of copyright. It is a self-sustaining right independent of registration.

The object of copyright law is to encourage authors, composers, artists and designers to create original works by rewarding them with the exclusive right, for a limited period, to exploit the work for monetary gain.

There is no copyright in ideas. Copyright subsists only in the form of expression in which the idea is reduced to work as specified

above. Since there is no copyright in an idea there shall be no infringement if an idea is adopted and put in one's own work and which is substantially a variant of the original.

The term of copyright in the case of published literary, dramatic, musical and artistic works (other than photographs) published within the lifetime of the author, subsists until 60 years beginning from the next calendar year following the year in which the author dies.

The Trademarks Acts

The Trademarks Act enables the registration and protection of trademarks, brands and trade names and prevents the fraudulent use of trademarks on merchandise.

Services have also been included for protection as Service Marks. Such registration is relevant to protection of non tangible products.

The Act also provides for protection to marks under the categories of Certification and Collective Marks.

Trademarks are registered for maximum of 10 years from the date of application;

Other enactments governing intellectual property are:

- The Design's Act
- The Geographical Indications of Goods (Registration and Protection) Act (passed by the Parliament but as yet to be implemented)
- The Semiconductors of Integrated Circuits Layout Design Act
- Protection of Plant varieties and Farmer's Right Act
- Information Technology Act
- Biological Diversity Act.

ARBITRATION & CONCILIATION ACT

Arbitration is a mechanism for expeditious redressing of disputes. With

there being increasing pressure on civil courts due to pending cases and a complex civil procedure code, arbitration is becoming increasingly popular as an alternative dispute resolution mechanism. An arbitration may take place between parties in terms of an agreement in writing, which could be in the form of a separate agreement in writing or a clause in an existing agreement.

THE RIGHT TO INFORMATION ACT

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission (CIC) and State Information Commissions (SICs) and for matters connected therewith or incidental thereto.

CONSUMER PROTECTION ACT

An Act which provides for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

LABOUR LAWS

Factories Act

The Factories Act provides for the health, safety, welfare, service conditions and other aspects of workers in factories.

Industrial Disputes Act

The Industrial Disputes Act provides for the investigation and settlement of industrial disputes in an industrial establishment relating to lockouts, layoffs, retrenchment etc. It provides the machinery for the reconciliation and adjudication of disputes or differences between the employees and the employers. Industrial undertaking includes an undertaking carrying any business, trade, manufacture, etc.

Payment of Bonus Act

The Payment of Bonus Act provides for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis

of production or productivity.

Payment of Gratuity Act

The Payment of Gratuity Act provides for a scheme for the payment of gratuity to all employees in factories, establishments employing 10 or more employees or other notified establishments.

Payment of Wages Act

The Payment of Wages Act regulates issues relating to time limits within which wages shall be distributed to employees and that no deductions other than those authorised by the law are made by the employers.

Minimum Wages Act

The Minimum Wages Act prescribes minimum wages for all employees in all establishments or working at home in certain employments specified in the schedule of the Act.

Employees Provident Fund Act (PF Act)

The PF Act seeks to ensure the financial security of the employees in an establishment by providing for a system of compulsory savings towards an employee's retirement. The Act is applicable to factories, establishments employing more than 10 persons and other notified establishments.

Employees Pension Scheme

The EPF Pension Scheme under the Employees Provident Fund Act, provides for monthly pension to employees on their superannuation, and for pensions to widows and children of employees.

Employee State Insurance Act (ESI Act)

The ESI Act provides for certain benefits to employees (and dependants, in some cases) in case of sickness, maternity, medical reasons, disablement and employment injury through government hospitals. The ESI Act is applicable to all organisations which have more than 10 employees.

Workmen's Compensation Act

The Workmen's Compensation Act provides that compensation shall be provided to a workman for any injury suffered during the course of his employment or to his dependents in the case of his death.

Maharashtra State Tax on Professions (Profession Tax Act)

The Profession tax Act is a state subject and every state is empowered to enact legislation in this regard. The Act extends to every person engaged actively or otherwise in any profession, trade, calling or employment and falling within the specified classes specified in the Act. Tax is payable to the state government as prescribed.

PREVENTION OF MONEY LAUNDERING ACT

Under the Act, every banking company, financial institution and intermediary shall have to maintain a record of all the transactions of the nature and value of which have prescribed in the Rules notified under the Act.

5. Taxation

Income Tax

India's income tax regime is governed by the Income Tax Act 1961 (IT Act) and the rules framed there under. The Indian Constitution prohibits states from imposing tax on income other than income derived from agriculture.

Administrative System

At the apex of the income tax department is the Central Board of Direct Taxes (CBDT) which is a part of the Finance Ministry and administers direct tax laws.

Assessments

All taxpayers are required to file a Return of Income form on or before specified dates for each tax year. Tax on income is assessed for a tax year commencing April 1, at the rates in force for the relevant assessment year. Assessment year is the year commencing on April 1, immediately succeeding the tax year.

Assessment of a non-resident can be made either directly or through his agent. In some cases, an income tax officer can treat a person in India as an agent of a non-resident and collect taxes from the non-resident through that agent.

Advance Ruling

A person can seek an advance ruling on determination (including a question of law or fact):

- In relation to a transaction undertaken or proposed, with a non-resident applicant; or
- Of the tax liability of a non-resident in respect of a transaction undertaken or proposed to be undertaken, by the resident applicant with a non-resident; or
- Determination or decision of an issue (including a question of law or fact) relating to computing total income, pending before any income tax authority or the Appellate Tribunal.

An advance ruling would be binding for the specific transaction on the tax authorities and the applicant who has sought it. The advance ruling would be binding unless there is a change in the law or in the facts. Advance rulings are communicated within six months from the date of application.

Residence

The liability to tax under the IT Act depends upon the residential status of the taxpayer, irrespective of his/her nationality or domicile.

An individual is said to be resident in India in a tax year if he/she is:

- In India for a period or periods amounting to 182 days or more in a tax year; or
- In India for an aggregate period of 60 days or more (182 days in certain cases) in the tax year and has been in India for an aggregate period of 365 days or more in the four tax years preceding that tax year.

A person is said to be 'resident but not ordinary resident' (NOR) in India in any tax year if such person is:

- An individual who has been non-resident in India in nine out of ten tax years preceding that tax year; or who has during the seven tax years preceding that tax year, been in India for a period or periods aggregating to 729 days or less;
- A manager of Hindu Undivided Family (HUF) who has been non-resident in nine out of ten tax years preceding that tax year; or who has during the seven tax years preceding that tax year, been in India for a period or periods aggregating to 729 days or less.

A non-resident is a person who is not resident in India.

A company, whether Indian or foreign, is said to be resident in India if the control and management of its affairs is situated wholly in India. A foreign company will have part of its management and control outside India and, hence, will be a non-resident.

Scope of Total Income

A resident pays tax in India on his/her global income.

A non-resident is taxable on his/her income received in India and also on income sourced in India. There are certain provisions in the IT Act that deem income to accrue or arise in India, i.e. sourced in India.

A 'resident but not ordinary resident' is not liable to tax in respect of income which accrues outside India unless that income is derived from a business controlled in or a profession set up in India.

Taxable Income

The income of the taxpayer is determined under five heads - salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources. Specific deductions are available under each source and there are specific rules as to what constitutes income from each source. The tax charged is at the rates in force for the relevant tax year.

The IT Act provides for setting off of losses and carry forward of unabsorbed losses under various heads of income, which are referred to below.

The consequent adjusted income is the gross total income. Gross total income less certain specified deductions and tax incentives provided under the IT Act is the total taxable income of a taxpayer.

Certain types of income and receipts are fully exempt from tax and do not form part of gross total income.

Agricultural Income

Agriculture is a state subject and there is no central income tax on agricultural income. However, agricultural income is aggregated with other income for the purpose of determining the rate of tax applicable to other income.

Tax Concessions

The IT Act offers several tax incentives to industrial units in the country in computing taxable income from business and profession. These incentives reduce the tax incidence substantially.

Depreciation allowance

Depreciation is available at specified rates on tangible and intangible capital assets (except land) owned by a tax payer and used for the purposes of business or profession.

Tangible assets are classified into four blocks – buildings, furniture and fixtures, plant and machinery and ships. Intangible assets include know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of a similar nature.

Block of Assets	Rates of Depreciation
Building	5-10%
Furniture	10%
Plant and Machinery	15-100%
Ships	20%
Intangible assets	25%

Depreciation is restricted to 50% of the rates in the year of acquisition if the asset is used for less than 180 days. Depreciation can also be claimed on fractional ownership of assets.

An additional 20% depreciation is allowed in case of any new machinery or plant (other than ships and aircrafts), acquired and installed by a tax payer engaged in the business of manufacture or production of any article or thing, subject to satisfying specified conditions.

Dividend and Income Distribution Tax (DT)

Domestic companies are required to pay tax on dividends declared, distributed or paid at 16.995% (including 10% surcharge and 3% education cess). The amount of dividend on which such tax is payable shall be reduced by the dividend, if any received from a subsidiary company, subject to conditions.

Mutual Funds (other than equity oriented funds) are required to pay tax on distributed income as follows:

- By a money market mutual fund or liquid fund:

- 28.33% (including 10% surcharge and 3% education cess).
- By a fund other than a money market mutual fund or liquid fund:
 - 14.16% (including 10% surcharge and 3% education cess) on income distribution to an individual or HUF.
 - 22.66% (including 10% surcharge and 3% education cess) on income distribution to others.

Equity oriented funds are exempt from tax on income distributed.

Dividend or income on which tax has been paid as above is not taxed again in the hands of the recipient.

A developer of an SEZ is exempt from payment of Dividend Distribution tax.

Special Provisions Relating to Income of Shipping Companies

Under the Tonnage Tax Scheme (TTS – a scheme of presumptive taxation), Indian shipping companies have to exercise the option to be assessed either under the TTS or under the normal provisions of the IT Act, subject to fulfilling various criteria.

Tax Holidays

The IT Act provides for tax holidays to certain industrial undertakings/enterprises engaged in specified sector/activities. These are summarized below.

A tax holiday of 100% of profits for any 10 consecutive years (at the option of the tax payer) out of the first 15 years of operation for undertakings/ enterprises engaged in the following activities:

- Development, operation and maintaining a specified infrastructure facility;
- Development, operation and maintaining a notified industrial park or Special Economic Zone (SEZ);
- Power generation and/or distribution transmission and distribution by laying networks or substantial renovation/modernization of networks;
- Laying/operating cross country natural gas distribution network;
- Developer of SEZ;
- Commercial production of mineral oil by an enterprise located in any part of India except the North Eastern Region;
- Refining of mineral oil.

Staggered tax concessions ranging from 30% - 100% for periods ranging from 3 – 15 years available to undertakings/units/companies engaged in the following activities:

- Handling, processing, storage and transportation of food grains, preservation and packaging of fruits and vegetables;
- Operating and maintaining hospitals located anywhere in India, other than specified excluded areas;
- Manufacture of any specified article or thing and/or substantial expansion undertaken by such undertaking in any Export Processing Zone, Integrated Infrastructure Development Centre, Industrial Growth Centre or Industrial Park, Software Technology Park or Industrial Area or Theme Park located in specified states;
- Building, owning and operating hotels and convention centres in specified areas;
- Manufacture or produce any eligible article or thing or carry on eligible business in North Eastern states;
- Collecting and processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure;
- Manufacture or produce any article or thing;
- Income of Off-shore Banking units and International Financial Service centre in SEZ.

Special tax concessions for export profits ranging from 50% - 100% for a period ranging from 5 – 15 years in respect of Export oriented undertakings, units in Free Trade Zones, Special Economic Zone engaged in the following activities:

- Export of articles or things or computer software manufactured by an undertaking in a FTZ or EPZ;
- Export of articles or things manufactured or services provided, by a unit in a SEZ;
- Export of articles or things or computer software;
- Export of eligible articles or things manufactured without imported raw material.

Business Loss

The IT Act provides conditions for set off of losses and carry forward of unabsorbed losses, as under:

In respect of losses in a tax year computed under any head of income:

Nature of Loss	Set off against	Unabsorbed loss carry forward time limit
Computed under any head of Income	Income computed under any other head of Income	-
Business income	Income computed under any other head of income, except Salary income	Eight
Speculation business	Speculation business income	Four
Short term capital loss	Capital gains	Eight
Long terms capital loss	Long term capital gain	Eight

Capital Gains

Profits and gains from the transfer of capital assets other than those held for business purposes, are charged to tax as 'capital gains' in the year in which the transfer takes place.

Capital gains are classified as long term capital gains if they arise from the transfer of capital assets:

- In the case of shares held in a company, or other securities listed on a recognised stock exchange in India or units of specified mutual funds or zero coupon bonds, for a period of 12 months or more;
- In the case of other assets, held for a period of 36 months or more.

The IT Act provides for certain transactions which are not considered as transfers of capital assets.

Income from long term capital gains arising from the transfer of equity shares in a company through a recognized stock exchange in India or a unit of an equity oriented fund (such transaction being charged to Securities Transaction Tax, as referred to in Section V, G hereafter), is exempt from income tax.

Long term capital gains are calculated after deducting from sale proceeds the indexed cost of acquisition, the indexed cost of improvement and expenditure incurred in connection with the transfer. The indexed cost of acquisition and indexed cost of improvement refer to costs duly indexed and adjusted for inflation as prescribed in the Act. Bonds and debentures (other than capital indexed bonds issued by the government) are not eligible for cost indexation. The benefits of indexation are not available to non-resident tax payers.

For the purpose of computation of capital gains, the tax payer has the option to take either the actual cost or the fair market value of the asset (other than depreciable asset), as at April 1,1981, as the cost of acquisition where the capital asset became the property of the tax payer by any mode specified in the IT Act.

In the case of a tax payer who is a non-resident, capital gains arising from transfer of capital assets, being the shares or debentures of an Indian company, shall be calculated by converting the cost of acquisition, expenses incurred for the transfer and sale consideration into the same foreign currency as was utilised for the purchase of shares or debentures. The capital gains so computed will be converted into Indian currency on the date of transfer.

Profits arising on the transfer of intangible assets such as goodwill of a business, the right to manufacture, produce or process any article or thing, the right to carry on any business, tenancy rights, stage carriage permits or loom hours, trade mark or brand name associated with a business, are chargeable to tax as capital gains.

In the case of land and buildings, where consideration declared as a result of the transfer of land or buildings or both is less than the value adopted by any State Government authority, for the purpose of payment of stamp duty, such value is deemed to be the consideration for the transfer. Capital gains are required to be computed accordingly. The IT Act provides for reference of disputed value to a valuation officer.

The IT Act provides for reduction of long term capital gains income to the extent the net consideration/capital gains are invested in specified assets and held for at least three years.

Long term capital gains are taxed at the rate of 20% in the case of all resident taxpayers. However, in case of long term capital gains on transfer of listed securities or units of any mutual fund or zero coupon bonds, the tax rate would be restricted to 10% of such capital gain computed without the benefit of indexation or at the rate of 20% of such capital gain computed with the benefit of indexation, whichever is more beneficial to the tax payer.

Short term capital gains are clubbed together with income of the tax payer from other heads and charged to tax at normal rates of tax.

However, short term capital gains arising on sale of equity shares in a company or units of an equity oriented fund (such transaction being charged to Securities Transaction Tax, as referred to in Section V, G hereafter) are taxed at 15%.

Business Reorganisation

Under the IT Act, demergers and amalgamations are recognised as a means of business reorganisation under the IT Act. Tax benefits and concessions available to an undertaking continue upon its transfer to a resulting company under a scheme of demerger.

Non Corporate/Individual Tax Rates and Advance Tax

Income tax rates for individuals, irrespective of residential status:

Taxable income INR	Rates of income – tax for tax year 2008-09	
	INR	INR
0 – 150,000	NIL	
150,001 – 300,000	10% of excess over	150,000
300,001 – 500,000	15,000 + 20% of excess over	300,000
Above 500,000	55,000 + 30% of excess over	500,000

Note: Surcharge at 10% of tax payable where taxable income exceeds INR 1 million. Education cess of 3% is levied on tax plus surcharge, if any. Individuals/HUFs are allowed a deduction from total income up to INR 100,000 in respect of specified investments.

Minimum net total income not chargeable to tax in case of women tax payers is INR 180,000 and in case of an individual who is of 65 years or more is INR 225,000.

Advance tax

Non-corporate taxpayers are required to estimate their net tax and to make advance payments in three instalments as given below:

Due date of instalments on or before	Amount payable as a % of net tax liability
September 15	At least 30%
December 15	At least 60%
March 15	Balance amount

Corporate Tax Rates and Advance Tax

The corporate tax year is the year ending March 31 and is taxed at the rates applicable in the assessment year commencing on the succeeding April 1.

The current corporate tax rates are:

Company	Basic tax rate	Surcharge	Education Cess (on tax plus surcharge)
Domestic	30%	10%	3%
Foreign	40%	2.5%	3%

Note: Surcharge is levied only when total income exceeds INR 10 million.

A foreign company, under the IT Act, is a company which is not a domestic company.

Income of a foreign company and non-residents from royalty, fees for technical services, is taxed at 10%.

Advance tax by corporate assesses

Companies are required to pay income tax in advance for each tax year in four instalments on or before specified dates as given below:

Due date of instalments- on or before	Amount payable as a % of net tax liability
June 15	At least 15%
September 15	At least 45%
December 15	At least 75%
March 15	Balance amount

Minimum Alternate Tax (MAT)

If the tax liability of a company is less than 10% of its book profits (as defined), such book profits are deemed to be the total income chargeable to tax at the rate of 10%, plus surcharge of 10% and further education cess of 3% on the tax and surcharge.

MAT paid can be carried forward for set off against tax payable under the other provisions of the IT Act, in seven subsequent years.

The provisions relating to MAT do not apply to a developer of a SEZ or a unit therein.

Scheme of Presumptive Taxation

Special provision is available under the Indian IT Act in the case of determination of income in the following cases:

- Civil construction
- Plying, hiring and leasing goods carriages
- Retail business.

Special Provisions for Non-Residents

Computation of taxable income of Non-Residents engaged in specified business

Taxable income of non-resident individuals and foreign companies is calculated at a flat rate varying from 5% to 10% of the amount paid or payable (whether in or outside India), or an amount received or deemed to be received in India by or on behalf of the taxpayer on account of the following:

- Business of operation of aircraft;
- Shipping business;
- Business of civil construction for turnkey power projects;
- Business of providing services or facilities in connection with or supplying plant and machinery on hire used in the prospecting for or extraction or production of mineral oils.

Taxation of Income of Non-Residents, etc

Income	Taxpayer	Rate of tax
<p>Income received from units purchased in foreign currency;</p> <p>Long term capital gain arising from the transfer of units purchased in foreign currency.</p>	Overseas Financial Organisation (Off-shore Fund)	10%
<p>Interest on notified Bonds of any Indian Company or Public Sector Company bonds purchased in foreign currency;</p> <p>Taxable dividend on Global Depository Receipts (GDRs) purchased in foreign currency;</p> <p>Long term capital gain arising from the transfer of bonds or GDRs.</p>	Non – resident	10%
<p>Taxable dividend on GDRs issued by Indian Company in accordance with notified Employee Stock Option Scheme purchased in foreign currency;</p> <p>Long term capital gains arising from the transfer of GDRs</p>	Resident employee of an Indian Company or its subsidiary engaged in specified knowledge based industry (IT or IT related) or service.	10%
<p>Taxable dividend on securities;</p> <p>Long term capital gain arising from the transfer of such securities;</p> <p>Short term capital gain arising from the transfer of such securities, if securities transaction tax is paid.</p>	Foreign Institutional Investors (FIIs)	<p>20%</p> <p>10%</p> <p>15%</p>

Short term capital gain arising from the transfer of such securities other than (iii)		30%
Winnings from lotteries, crossword puzzles, races including horse races, card game and other game of any sort or gambling or betting of any form or nature whatsoever.	Any non-resident	30%
Participation in any specified game or sports; Advertisement; Contribution of articles relating to any game or sports in India in newspaper, magazines or journals.	Foreign national who is non –resident	10%
Income by way of amount guarantee to be paid or payable in relation to any specified game or sports played in India.	Non-resident Sports Association or Institution.	10%
Royalty/Fees for technical services received pursuant to an agreement on or after June 1, 2005 (<i>Refer Note</i>).	Non-resident Foreign Company	10%
Income from units of an open-ended equity oriented fund of the Unit Trust of India or of mutual funds. Anonymous donations received on behalf of any university or other educational institution or any hospital or any fund or any specified trust or institution.	Non-resident Foreign Company Any non-resident	Tax Free 30%

Note: Royalty received by a foreign company through a Permanent Establishment (PE) in India is subject to tax as business profits, subject to conditions and compliances.

Withholding Taxes

Every person, other than an individual not subject to audit under the IT Act, who makes certain payments including salary, interest, contract payments, rent, commission, brokerage and fees for professional and technical services is required to deduct tax at source at prescribed rates. Refer Appendix II for rates of withholding taxes on common business and commercial payments.

In the case of a non-resident and foreign company, tax is deducted at source at the rates prescribed for the particular source of income. No deduction is allowable in respect of payments made for interest, royalty, and fees for technical services to non-residents or foreign companies, whether within India or outside India, without deduction and payment of tax.

An application can be made to the tax authorities for permission to withhold taxes at a rate lower than those prescribed under the IT Act.

The IT Act provides for disallowance of an expense, if the tax required to be deducted thereon has not been deducted, or has not been paid into the government treasury, if deducted. Such expense will be allowed as a deduction in the year in which the tax has been withheld/ paid to the government treasury.

Taxes withheld must be deposited and returns for the same must be filed within the specified time limits. Full tax credit is granted to the payee of tax deducted at source upon production of a tax deduction certificate against the final tax liability of the payee.

Double Taxation Relief

The government has entered into comprehensive agreements with various countries to avoid the double taxation of income. Agreements have also been entered with certain countries to avoid double taxation in respect of income from shipping and air transport.

Tax rates under treaties with India's major trading partners are given in Appendix III.

Business Connection

The term 'business connection' under the IT Act is significant for a non-resident because any profit earned by a non-resident is taxable in India if it is earned through or from any business connection in India.

Business connection normally encompasses:

- A business in India;
- A connection with the non-resident and that business;
- A direct or indirect earning of income by virtue of or through that connection.

A 'business connection' requires an element of continuity. An isolated transaction is not regarded as a business connection. The existence of a business connection is a question of fact and would be based upon the circumstances of each case.

Transfer Pricing

The IT Act contains provisions relating to transfer pricing in an international transaction with an associated enterprise where either party to the transaction is a non-resident.

Income arising from an 'international transaction' between 'associated enterprises' is to be computed at arm's length price.

In accordance with internationally accepted principles, it has been provided that any income arising from an international transaction or an outgoing like expenses or interest from the international transaction between associated enterprises, shall be computed having regard to the arm's length price, which is the price that would have been charged in the transaction if it had been entered into by unrelated parties in similar conditions.

The arm's length price shall be determined by one of the methods described below:

- Comparable uncontrolled price method;
- Resale price method;

- Cost plus method;
- Profit split method;
- Transactional net margin method;
- Any other prescribed method.

The taxpayer can select the most appropriate method to be applied to any given transaction, but such selection has to be made taking into account the factors prescribed in the Income Tax Rules. With a view to allowing a degree of flexibility in adopting the arm's length price, the IT Act provides that where the most appropriate method results in more than one price, a price which differs from the arithmetical mean by an amount not exceeding 5% of such mean, may be taken to be arm's length price, at the option of the tax payer.

The primary onus is on the taxpayer to determine an arm's length price in accordance with the rules, and to substantiate it with the prescribed documentation, where such onus is discharged by the tax payer and the data used for determining the arm's length price is reliable and correct, there can be no intervention by the Assessing Officer.

Detailed documentation in respect of international transactions must be maintained. Accountants' reports are to be completed and filed in the prescribed format before the due dates for filing tax returns.

Annual Information Report

The IT Act requires certain specified persons to furnish an Annual Information Report (AIR) in respect of certain specified financial transactions recorded by them during the financial year.

Wealth Tax

Wealth tax in India under the Wealth Tax Act is payable each year on the taxable wealth and depends upon residential status, citizenship and the location of assets.

Taxable wealth includes residential and farm houses, (one property is exempt for individuals) motor cars, jewellery, bullion, utensils of gold or silver, yachts, boats, aircraft, urban land and cash exceeding specified limits as reduced by debts owed and incurred in relation to such assets.

A resident Indian citizen pays tax on his global net wealth. A non-resident pays tax on his net wealth in India.

A foreign citizen, whether resident in India or abroad, pays wealth tax only on his net wealth in India.

Wealth tax, in the case of individuals and companies, is chargeable at 1% of the net taxable wealth exceeding INR 1.5 million (plus surcharge at 10% and further education cess of 3% on the tax plus surcharge).

Salaries and Prerequisites

Salary includes salary due from the current employer, previous employer, advance salary and arrears of salary. It also includes wages, annuity, pension, gratuity fees, commission, perquisites and profits in lieu of salary and leave salary.

Perquisites include value of accumulation and any benefit granted or provided free of cost or at concessional rate.

Separate rules govern the valuation of perquisites.

Taxation of Employee Stock Option Plans

ESOPs refer to the schemes offered by employer-companies to their employees for acquiring a stake in the employer-company. The stake may be in various forms such as allotment of shares, grant of stock options that entitle the employee to acquire the shares in the future, or simply by way of rewarding an employee based on the appreciation in the value of shares.

The taxation aspects relating to ESOPs are:

- ESOPs are subject to Fringe Benefit Tax (see AC, below), at the time of allotment or transfer of shares, on the excess of the fair value as on the date of vesting, and the Exercise Price;

- The value on which the employer pays the FBT is treated as the cost of acquisition, in the hands of the employee;
- The employer can recover the FBT from the employee, if the scheme is suitably modified and the recovery of the FBT is deemed to be the tax paid by such employee in relation to the value of the fringe benefits provided to him. However, the employee is not entitled to claim any refund/tax credit in respect of such tax, against any tax liability.

Income tax Rules prescribe the basis for valuation of specified securities (being an equity share) and other securities.

SEBI has prescribed the accounting treatment for securities issued under ESOPs.

Fringe Benefit Tax (FBT)

Fringe Benefit Tax (FBT) is payable at the rate of 30% of the value of specified fringe benefits (plus surcharge and education cess) provided or deemed to have been provided by an employer to his employee. FBT shall be charged in addition to the Income tax charged for every assessment year and shall be payable by the employer even if no income tax is payable by the employer under other provisions of the Income tax Act.

A return of FBT is to be filed along with the annual income tax return each year.

Indirect Taxation

Excise Duty

Central Excise Duty

Excise Duty is levied on goods manufactured or produced in India at the rates prescribed in the Central Excise Tariff Act as periodically amended.

The duty, in most cases, is levied on the basis of value of the excisable goods. Value, for this purpose, (with effect from July 1, 2000), is the 'transaction value' which is the value/price:

- For delivery at the time and place of removal;
- Where buyer is not a related person; and
- Price is the sole consideration.

Excise Duty is payable by the manufacturer but is, commercially, recovered from the buyer as a part of consideration for sale of goods.

To avoid cascading effect, a scheme known as CENVAT has been brought into force. Under the CENVAT Scheme, a manufacturer can avail of the credit of the Central Excise Duties or Additional Duties of Customs including education cess paid on specified inputs and capital goods used in the manufacture of excisable goods and utilise it in discharging duty on finished excisable goods. The credit mechanism has been further expanded to allow inter-sectoral credit of tax paid on goods and services (see Service Tax, below).

Rate of Excise Duty

The present effective rate is 14.42% (including education cess of 3%). This duty is applicable to almost all excisable goods. There is partial exemption to a few products.

Customs Duty

Customs duties are levied on import of goods in the country under authority of Customs Act and in certain instances on exports. It is levied at the rates specified in the Customs Tariff Act.

Rate of Customs Duty

Under the custom laws, the effective rate of duty is approx. 31.70% which includes basic duty, countervailing duty, special additional duty, and education cess, anti-dumping and safeguard duties.

Countervailing Duty (CVD) is equivalent to excise duty leviable on a like product manufactured in India. If a like product is not manufactured or produced in India, the excise duty that would be leviable on that product had it been manufactured or produced in India is applied. If the product is leviable to duty at different rates, the highest rate among those rates is applied. Such duty is leviable on the value of goods plus basic custom duty payable. Current rate applicable to most of the industrial products is 14%.

General

The importer is required to pay customs duty at the time of clearance of goods from port/ airport. The rate of duty depends on the classification of goods, which is based on internationally accepted Harmonized System of Nomenclature.

The duty is largely levied on ad-valorem basis, i.e. based on the value of the goods. The duty is levied on the 'transaction value' which is the value of the imported goods between unrelated persons.

Octroi Duty

Octroi duty is a tax levied on the entry of goods within certain city limits.

Stamp Duty

Stamp Duty is imposed on execution of specified instruments. Stamp Duty is charged on the instrument and not on the transaction. The levy is governed by the Indian Stamp Act or the respective State Stamp Acts. Some states have enacted separate legislations, whereas some have adopted Indian Stamp Act with or without modifications. The rates of stamp duty vary from state to state.

An instrument is defined to include every document by which any right or liability is or is purported to be created, transferred, limited, extended, extinguished or recorded. However, it does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt which are under purview of the Indian Stamp Act as applicable to Maharashtra.

Any instrument which is inadequately/not stamped is inadmissible as evidence for any purpose. Such instruments can be admissible only on payment of the requisite amount of duty alongwith interest at 2% per month, subject to the penalty not exceeding twice the amount of duty.

Sales Tax/ Value Added Tax

Sales Tax is a levy on purchase and sale of goods in India

Under the Sales Tax scenario there is a cascading effect because of lack of full set-off/credit mechanism. To plug this loophole State Governments have implemented Value Added Tax (VAT) The important features of the Value Added Tax Act in Maharashtra are discussed hereunder:

Value Added Tax Act

A dealer is liable to pay tax on the basis of turnover of sales or purchases within the state. The term dealer includes persons who buy or sell goods in the state whether for commission, remuneration or otherwise in the course of their business

Every dealer whose sales turnover and the turnover of taxable goods (purchased or sold) exceeds the limits specified in the table below, is required to get registration under the VAT Act and will be liable to pay VAT:

Turnover limits for the purpose of liability/registration:

Category of dealer	Total turnover of sales INR	Turnover of taxable goods purchased or sold INR
Importer	1,00,000	10,000
Others	5,00,000	10,000

Indicative rates of tax are as follows:

Nature of goods	Rate of tax
Essential commodities.	Nil
Gold, silver, precious stones, pearls, etc.	1%
Declared goods, industrial inputs, and such other specified goods.	4%
Foreign liquor, country liquor, liquor imported from foreign countries and molasses	20%
Certain petroleum products.	Varies from 10% to 33% (in few cases specific duty of INR 1 per litre also applicable.)
All other goods not covered above (Revenue Neutral Rate).	12.50%

Every registered dealer is required to file a correct, complete and self-consistent return, in prescribed form, by the due date and pay the tax due, if any.

The tax payable, if any, as per return, shall be paid into the government treasury along with the return.

All registered dealers are entitled to set off the VAT paid on inputs like raw material, finished goods and packing material, within the State of Maharashtra against their output tax liabilities on fulfilling prescribed conditions.

No tax is payable on export of goods out of India. However, a set off is available of input tax paid on purchases, from within the State, used in such exports. The VAT paid on purchases (inputs), may be adjusted against the VAT/CST liability or claimed as a refund.

Works Contracts Tax

States also levy tax on transactions which are 'deemed sales' like works contracts and leases. A works contract essentially comprises of a contract for carrying out work involving supply of labour and material, property in which passes during execution of the contract.

Under the Works Contract Composition Scheme, a dealer may, at his option, choose to pay tax at 5% on Civil Contracts (as notified) or in case of other contracts at 8% on the total contract value. (After deducting there from the amount paid towards subcontract, if any).

Tax is required to be deducted at source and paid as prescribed.

Tax on Right to Use Goods (Leasing and Hiring)

Earlier the tax on leasing and/or hiring charges were payable under the Maharashtra Tax on Right to Use Goods Act. Presently, all such transactions of 'deemed sale' are liable to tax under the MVAT Act at the same rate of tax as prescribed in the Schedules.

The Central Sales Tax Act

Every dealer is liable to pay tax under the Central Sales Tax Act, on sales of goods (other than Electrical Energy) effected by him in the course of interstate trade or commerce during the year. The tax is payable if the sale or purchase:

- Occasions the movement of goods from one state to another; or
- Is effected by a transfer of documents of title to the goods during their movement from one state to another.

Further, the dealer is liable to pay tax on sale of taxable goods affected by him in the course of interstate trade or commerce, notwithstanding that the turnover limit of sales or purchases for registration and liability for tax has not been exceeded under the State Tax Laws of the relevant state.

No tax is payable on any transaction of sale in the course of exports outside of India. Further, although the sale is effected by transfer of documents of title to such goods during their movement from one state to another and attracts tax liability, any subsequent sale during such movement effected by transfer of documents of title to such goods to a registered dealer, provided the prescribed declarations are obtained from the supplier and the purchaser of such goods.

Rates of tax on sale in the course of inter-state trade or commerce are prescribed by the Act.

Transfer of goods from one state to another to one's own place and business is exempt from levy of tax. A declaration in Form 'F' must be obtained from the branch.

Transactions of export of goods outside India or import of goods from out of India are exempt from tax. Dealers effecting sales in the course of interstate trade are required to obtain a declaration in Form 'C' from the purchaser of goods to apply concessional rate.

The tax is to be collected by the registered dealer, who sells goods in the course of interstate trade or commerce and shall be paid to the Government treasury, along with a return, within the time as may be prescribed by the State Government in the local Act.

SERVICE TAX

Service tax is levied on specified categories of services if the service provider's taxable service exceeds 1 million. The effective rate of Service tax is presently 12.36% (including education cess of 3%) and charged on the gross value of services. Generally, it is payable on receipt basis, i.e. liability to pay arises on receipt of value for services charged. It is payable by the service provider and is recovered from the recipient of services

As a Service Provider:

A service provider may be liable for Service Tax on rendition of any of the 106 categories of services provided or to be provided (includes advances received).

As a Service Receiver:

- Services received from persons based outside India;
- Insurance companies are liable to pay Service tax in respect of services provided by insurance agents;
- Mutual Fund/Asset Management Companies to pay Service tax on mutual fund distribution services;
- Sponsor of an event to pay service tax in case of sponsorship services;
- Transportation of goods by road service.

Services provided by overseas service providers has been brought within the purview of Service tax. In such case the recipient of the

services in India would be liable to register and pay service tax (popularly referred to as reverse charge mechanism).

Import of Services

For the purpose of taxability services provided from outside India and received in India have been categorized as follows:

- Based on location of property includes 13 services, which are provided in relation to immovable property, the services shall be considered as imported if the immovable property is situated in India;
- Based on performance includes 53 services, which shall be considered as imported and liable to tax if the services are wholly or partly performed in India;
- Based on location of service recipient includes 39 services, which shall be considered as imported and liable in case the recipient of service is located in India and the services are used in relation to commerce or industry, i.e. commercial use.

Export of Services

The Government has introduced the concept of export of services with effect from March 15, 2005, whereby services exported by an Indian entity are not liable to Service Tax on fulfillment of certain conditions.

In addition to others, following conditions are relevant to constitute exports:

- The service is provided from India and used outside India;
- Payment for such service is received by the service provider in convertible foreign exchange.

The rules have categorized the services under the following three categories:

- Based on location of property includes 13 services, which are provided in relation to immovable property, the services shall be considered as exported if the immovable property is situated outside India;
- Based on performance includes 53 services, which shall be considered as exported if the services are wholly or partly performed outside India;
- Based on location of service recipient includes 39 services, which shall be considered as exported:
 - Where the services are provided and used in or in relation to business or commerce the services shall be considered as exported if the recipient of the service is located outside India. However, if such a recipient of service has any commercial establishment or office in India, the services shall be considered to be exported only if the order for provision of such services is made by the recipient of the service from any of his commercial establishment or any office located outside India.
 - Where the services are not provided and used in or in relation to business or commerce (such as for personal use), the services shall be considered as exported if the recipient of the service is located outside India at the time of provision of such services.

Service tax rebate is given on specified services subject to certain conditions.

Registration

Ordinarily, every person liable to pay service tax is required to register itself with Service tax authorities within 30 days from the date of commencement of business of providing of taxable service and comply with procedural requirements.

Securities Transaction Tax

Securities transaction tax at the specified rates of the value of the securities transacted on a recognized stock exchange in India is levied as follows:

Taxable securities transaction	Rate	Payable by
Purchase of an equity share in a company or a unit of an equity oriented fund, where the transaction of such purchase is entered into in a recognized stock exchange and the contract for the purchase of such share or unit is settled by the actual delivery or transfer of such share or unit.	0.125%	Purchaser
Sale of an equity share in a company or a unit of an equity oriented fund, where the transaction of such sale is entered into in a recognized stock exchange and the contract for the sale of such share or unit is settled by the actual delivery or transfer of such share or unit.	0.125%	Seller
Sale of an equity share in a company or a unit of an equity oriented fund, where the transaction of such sale is entered into in a recognized stock exchange and the contract for the sale of such share or unit is settled otherwise than by the actual delivery or transfer of such share or unit	0.025%	Seller
Sale of an option in securities	0.017%	Seller
Sale of an option in securities, where the option is exercised.	0.125%	Purchaser
Sale of a futures in securities	0.017%	Seller
Sale of a unit of an equity oriented fund to the mutual fund.	0.25%	Seller

The securities transaction tax is collected by the stock exchange and remitted to the exchequer.

The securities, on which such tax is levied, include:

- Shares, bonds, debentures, etc., or other marketable securities of a like nature, in or of any incorporated company or other body corporate;
- Derivatives;
- Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- Security receipts defined under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act;
- Government securities;
- Other notified instruments;
- In the case of option contracts, the value of the transaction would include the strike price and the premium;

The authorities under the IT Act shall administer the securities transaction tax.

Commodities Transaction Tax

Commodities transaction tax at the specified rates of the value of the commodities transacted on recognized associations in India is levied (effective from the date as yet to be notified) as follows:

Taxable securities transaction	Rate	Payable by
Sale of an option in goods or an option in commodity derivative.	0.017%	Seller
Sale of an option in goods or an option in commodity derivative, where option is exercised.	0.125%	Purchaser
Sale of any other commodity derivative	0.017%	Seller

The commodities transaction tax is collected by the association and remitted to the exchequer.

The authorities under the IT Act shall administer the commodities transaction tax.

6. Accounting & reporting

Accounting Profession

The Institute of Chartered Accountants of India (ICAI) is the professional body which represents the accountancy profession of national and international levels. Regional councils and local chapters of the ICAI, which are spread all over India, undertake the task of continuing professional education.

Auditing Requirements

Auditing the accounts of a Company is compulsory under the Companies Act 1956. Companies prepare their financial statements based on historical cost as per the provisions of the Companies Act 1956. These financial statements are required to be audited by Chartered Accountants and the Annual Report, circulated to the members every year, generally consists of:

- Directors Report
- Auditor's Report
- Balance Sheet
- Profit and Loss Account
- Cash Flow Statement.

Audit Under the Central Government Cost Audit Rules

The Central Government may direct certain companies for Cost Audit of accounts. The cost auditor must be a cost accountant under the Cost and Works Accountant Act, 1959.

Audit under Income Tax Law

The Income tax Act, 1961 requires a tax audit to be conducted by a Chartered Accountant for tax payers with sales from business in excess of INR 4 million a year, or with gross receipts from a profession in excess of

INR 1 million. An audit report is also required to be issued by a Chartered Accountant in order to claim tax incentives/holiday benefits.

Accounting Standards and Principles

Statements of accounting standards are issued by the Accounting Standard Board of the ICAI which prescribes methods of accounting approved by the ICAI for application to financial statements (for corresponding reference to US GAAP/ IFRS, refer Appendix IV). The accounting standards are notified by the Accounting Standards Board (ASB) in the Ministry of Company Affairs, Government of India. In addition to accounting standards, generally accepted accounting principles and guidance notes are issued by the ICAI. The ICAI is committed to be fully compliant with the IFRS by April 1, 2011.

7. UHY firms in India

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9. UHY offices worldwide

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit www.uhy.com

Appendix I

Salient features for investments in Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Special Economic Zones (SEZs) Schemes.

	EOU/EHTP/STP Unit	SEZ Unit
Foreign equity permissible	100%, with repatriation benefits Sectoral norms as notified by the Government shall apply to FDI in services activities.	100% with repatriation benefits, subject to exceptions. Sectoral norms as notified by the Government shall apply to foreign investment in services and trading activities.
Approvals	Single window clearance for all activities. Separate procedure of approvals, where.	Single window clearance for all activities. Separate procedure of approvals, where licensing is required.
Duty free imports permissible	Capital goods, raw materials, components and other inputs, imported or procured from Domestic Tariff Area (DTA) or bonded warehouses in DTA. Units may import/procure from DTA, duty free. Certain specified goods may also be imported duty free for creating a central facility for use by software units. Facility can be used for export of software.	Capital goods, raw materials, components and other inputs, imported or procured from DTA. Units may import/procure from DTA, duty free, all types of goods for creating a central facility for use by units. Facility can be used by DTA units for export of software. SEZ units may import/procure goods and services from DTA without payment of duty for setting up, operation and

		maintenance of units in the Zone.
Leasing of capital goods	Pursuant to a contract, capital goods may be sourced from a domestic/foreign leasing company without payment of duty.	Pursuant to a contract and other compliances, capital goods may be sourced from a domestic/foreign leasing company without payment of duty.
Exports	Entire production of goods and services, including repair, re-making, reconditioning and re-engineering. Trading units are not covered under these schemes.	Export of goods and services including agro-products, partly processed goods, sub-assemblies and components and by-products, rejects and waste scrap arising out of the production process. Software units may undertake exports using data communication links or in the form of physical exports (which may be through courier service also), including export of professional services.
Export obligations	Unit shall be a positive Net Foreign Exchange (NFE) earner, which shall be calculated cumulatively in blocks of 5 years, starting from commencement of production. Supplies of Information Technology Agreement (ITA-1) and notified zero duty items manufactured by these units in the (DTA) shall be counted towards	Unit shall be a positive Net Foreign Exchange (NFE) earner, which shall be calculated cumulatively in blocks of 5 years, starting from commencement of production. Supplies of Information Technology Agreement (ITA-1) and notified zero duty items manufactured by these units in the (DTA) shall be counted towards fulfillment

	fulfillment of export obligation.	of export obligation. Supplies to other EOU/ SEZ/EHTP/STP units shall also be counted towards NFE provided that such goods are permissible for procurement by units.
DTA sales	50% of FOB value of exports at 25% of basic customs duty plus full CVD. DTA sales beyond this entitlement are permissible against payment of full duties provided the unit has achieved positive NFE.	DTA sales permissible on payment of applicable duty. SEZ unit may sell goods, including by-products, and services in DTA in accordance with the import policy in force, on payment of applicable duties.
Investment criteria	For EOUs – INR 10 million.	NIL
Income tax benefits	Export profits 100% tax exempt up to tax year 2009–10.	100% Income tax exemption on export profits is available to SEZ units for 5 years, 50% for next 5 years and 50% of ploughed back profits for 5 years thereafter.
Central sales tax	Refundable.	Exempt.
Other benefits/incentives	Exemption from payment of central excise duty on goods procured from DTA on goods manufactured in India.	Exempt from service tax. Exempt from central excise duty. Full freedom in allocation of developed plots to

	<p>Refund of duty paid on fuel procured from domestic oil companies, depots of domestic oil PSUs at rates notified.</p> <p>Credit on service tax paid.</p> <p>Exemption from industrial licensing for manufacture of items reserved for small scale sector.</p>	<p>approved SEZ units on purely commercial basis.</p> <p>Full authority to provide services like water, electricity, security, restaurants and recreation centres on commercial terms.</p> <p>Facility to develop township within the SEZ with residential areas, markets, play grounds, club and recreation centres.</p> <p>Reimbursement of duty paid on fuels or any other goods procured from DTA as per the rate of drawback notified by the Directorate General of Foreign Trade from the date of such notification.</p> <p>Procurement of raw materials and export of finished products exempt from central levies.</p> <p>Exemption from Industrial Licensing for manufacture of items reserved for SSI sector.</p> <p>Exempt from payment Minimum Alternate Tax.</p> <p>Exempt from payment of Dividend Distribution Tax.</p>
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Appendix II

Rates of Withholding Taxes on common business/commercial payments

Sr. No.	Particulars	Payment threshold (INR)	Rate of Tax deduction at source (TDS)	
1.	Interest on securities		Non-corporates	10%
			Corporates	20%
No TDS if the interest amount is not exceeding INR 2,500				
2.	Interest other than		Non-corporates:	10%
	Interest on securities		Corporates	20%
No TDS if the interest amount is not exceeding INR 10,000 in the case of deposits in banks including Co-op. banks, cooperative societies engaging in the business of banking and post offices. No. TDS if payment is made to the legal heirs.				
3.	Payments under a contract	20,000 per contract or contracts aggregating more than 50,000 in a tax year	In respect of an agreement: with contractor: with sub contractor Advertisement contracts	2% 1% 1%
4.	Brokerage commission	2,500	10%	
5.	Rent	120,000	For the use of machinery plant or equipment: For the use of any land or building (including factory	10%

			building) or land appurtenant to a building (including factory building) or furniture or fittings: - to Individuals/HUF - to others	15% 20%
6.	Professional and Technical Services	20,000	10%	

Note: Surcharge is levied at 10% of the rate of tax.

Education cess of 3% is levied on the rate of tax including surcharge.

Appendix III

Upper limits of withholding taxes in India's agreements for avoidance of Double Taxation in case of top 10 investing countries.

Name of the country	Dividends		Interest		Royalty		Fees for technical services	
	Right of the state to tax	Rate	Right of the state to tax	Rate	Right of the state to tax	Rate	Right of the state to tax	Rate
Cyprus	Both	10%	Both	10%	Both	15%	Both	10%
French Republic	Both	10%	Both	10%	Both	10%	Both	10%
Germany	Both	10%	Both	10%	Both	10%	Both	10%
Japan	Both	15%	Both	10%,	Both	20%	Both	20%
Mauritius	Both	5% ,	Both	*	Both	15%+	**	
Netherlands	Both	10%	Both	10%	Both	10% 15%	Both	10% 15%
Singapore	Both	10%, 15%	Both	10%, 15%	Both	15%, 10%	Both	15% 10%
United Arab Emirates	Both	5%	Both	5% 12.5%	Both	10%	***	
United States of	Both	15% 25%	Both	10% 15%	Both	10%, 15%,	Both	10%, 15%,
United Kingdom	Both	15%	Both	15% 10%	Both	10%, 15%, 20%	Both	10%, 15%, 20%

* Not mentioned - tax law in the state, which has the right to tax, shall prevail.

** No separate provision- to be taxed as per domestic law.

*** In the country of residence .As per domestic law.

\$ Interest exempt if beneficially owned by government or bank carrying on bonafide banking business. In other cases, rate is applicable as per domestic law.

Note:

- 1) Royalties and fees for technical services received by a foreign company are taxed at 20% in India, if they are received in pursuance of an agreement made after May 31, 1997
- 2) Royalties and fees for technical services received by a foreign company are taxed at 10% in India, if they are received in pursuance of an agreement made after May 31, 2005.

Appendix IV

List of Accounting Standards (AS) along with reference of associated US GAAP/IFRS

AS	Title of the AS	* US GAAP Reference	IFRS Reference
AS 1	Disclosure of Accounting Policies	SFAS 16, 111, 154	IAS 8
AS 2	Valuation of Inventories	SFAS 48 , 49, 151, 153	IAS 2
AS 3	Cash Flow Statements	SFAS 95, 102, 104, 115,	IAS 7
AS 4	Contingencies and Events Occurring after the Balance Sheet Date	SFAS 1	IAS 10
AS 5	Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies	SFAS 16, 111, 154	IAS 8
AS 6	Depreciation Accounting (Related Standards under US – GAAP are stated under AS -10)	SFAS 2, 34, 42, 58, 62, 68, 109, 141, 142, 143, 144, 146, 147, 153	IAS 16
AS 7	Accounting for Construction	SFAS 109	IAS 11
AS 8	Accounting for Research and	SFAS 2	IAS 38
AS 9	Revenue Recognition	SFAS 5, 45, 48, 66, 67,	IAS 18
AS 10	Accounting for Fixed Assets (includes related standards on depreciation under US – GAAP)	SFAS 2,34, 42, 58, 62, 68, 109, 141, 142, 143,144, 146, 147, 153	IAS 16
AS 11	Accounting for the Effects of Changes in Foreign Exchange Rates	SFAS 52, 133	IAS 21
AS 12	Accounting for Government	SFAS 16	IAS 20

AS 13	Accounting for Investments	SFAS 52, 65, 94, 95, 102, 107, 109, 111, 112, 115, 126, 130, 133, 137, 138, 140, 142, 144, 145, 149, 155	IAS 39, 40
AS 14	Accounting for Amalgamations	SFAS 94, 140 , 141, 142	IFRS 3
AS 15	Accounting for Retirement Benefits in the Financial Statements of Employers	SFAS 5, 87, 88, 106, 112, 130, 132(r), 144, 149	IAS 19
AS 16	Borrowing Costs	SFAS 34	IAS 23
AS 17	Segment Reporting	SFAS 131	IFRS 8
AS 18	Related Party Disclosures	SFAS 57	IAS 24
AS 19	Leases	SFAS 13, 22, 23, 27, 28, 29, 66, 91, 98, 140, 143, 144, 145, 146	IAS 17
AS 20	Earnings Per Share	SFAS 128 , 129 & 150	IAS 33
AS 21	Consolidated Financial	SFAS 141	IFRS 3
AS 22	Accounting for Taxes on Income	SFAS 5, 6, 37, 52, 109	IAS 12
AS 23	Accounting for Investments in Associates in Consolidated Financial Statements	SFAS 94, 140, 141, 142	IAS 28

AS	Title of the AS	* US GAAP Reference	IFRS Reference
AS 24	Discontinuing Operations	SFAS 144	IFRS 5
AS 25	Interim Financial Reporting	SFAS 16, 69, 95, 109, 128, 130, 131, 132 (r), 154	IAS 34
AS 26	Intangible Assets	SFAS 142	IAS 38
AS 27	Financial Reporting of Interest in	SFAS 140	IAS 31
AS 28	Impairment of Assets	SFAS 131, 142	IAS 36
AS 29	Provisions Contingent Liabilities, Contingent Assets.	SFAS 5, 6, 11, 43, 48, 78, 112	IAS 37

AS 30	Financial Instruments – Recognition and Measurement and Limited Revisions to AS 2, AS 11 (revised 2003), AS 21, AS 23, AS 26, AS 27, AS 28 and AS 29 (Effective from April 1, 2009 and Mandatory from April 1, 2011)	SFAS 107, 115, 133, 137, 138, 140, 149, 150, 155, 156, 159, 161	IAS 39, IFRS 7
AS 31	Financial Instruments – Presentation (Effective from April 1, 2009 and Mandatory from April 1, 2011)		IAS 32, IFRS 7

* All SFAS's have to be read along with related APB's, ARB's, FIN's EITF's, SOP's, and FSP's

Abbreviations

APB : Accounting Principles Board Opinion

ARB : Accounting Research Bulletins

FIN : FASB Interpretations

EITF : Emerging Issue Task Force

SOP : AICPA Statement of position

FSP : FASB Staff Position

IFRS : International Financial Reporting Standards

IAS : International Accounting Standards