

INDIA ENTRY STRATEGY

TAX & REGULATORY GUIDE





FOREWORD

India is the seventh largest country by landmass and the most populous democracy in the world. India an ancient land with growing young population is an emerging market power. With all its geopolitical and demographic advantage, India has shown that it has the capability and potential to develop the skill, scale and the speed that global players demand. Today's consumerism driven world needs massive global factory and India can and should rise to the occasion.

Sustained business reforms like unified indirect tax law system, introduction of insolvency and bankruptcy code to turn around stressed assets, stabilization of government's outlook towards imposing taxes on foreign investors, liberalization of the framework for foreign investment have been contributing to ease of Doing Business in India

This note "India Entry Strategy" introduces the basic legal regime regarding set up and conduct of business in India and answers questions and issues commonly raised by overseas investors. It is intended to act as a broad legal guide to aid your decision making process when deciding to start and carry on operations in India. However, it should not be used as a legal opinion on any specific matter. The laws discussed here are subject to change and the regulatory environment in India is dynamic, therefore we would recommend that proper professional advice is sought if one intends to invest or expand operations in India.

We, at GBCA, would be happy to assist you with an end to end solution approach for your journey in India.



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1. INTRODUCTION

Non-residents¹ seeking to set up business operations in India need to understand and evaluate following three important aspects of India Entry Strategy:

1. **Strategic aspects:** It covers understanding and evaluating economic policies, political environment, markets & availability workforces and raw material, basic infrastructure, supply chain etc. in India.
2. **Legal aspects:** The important laws impacting the business operations in India are:
 - a. Exchange Control Regulations: The Foreign Exchange Management Act, 1999 and the delegated legislations thereunder.
 - b. Corporate Laws: Companies Act, 2013/Limited Liability Partnership (LLP) Act, 2008 and the delegated legislations thereunder. Listed entities are further governed by Securities and Exchanges Board of India.
 - c. Labour Laws: Based on various factors like nature of work to be performed, type of establishment, no. of employees, etc. business entities in India have to follow various Central as well as State specific labour laws.
 - d. Sector Specific Laws: There are various sector specific laws which the business entity has to follow. E.g. Sectors like Electricity, Banking, and Infrastructure etc.
3. **Taxation aspects:**
 - a. Domestic Taxation Laws: The Income Tax Act, 1961 regulates levy, administration, collection and recovery of direct taxes along with Indirect tax laws including laws relating to Goods and Services Tax (GST) and Customs.
 - b. International Tax Law: Indian Tax treaty with tax jurisdiction of the foreign entity along with MLI².

Once the above aspects are analyzed, presence in India can be through following preferred ways:

- a. Operating as an Indian Entity in the form of a Private Limited Company or LLP
- b. Operating as a Foreign Company in the form of Liaison Office/Branch office/Project office

In this note “India Entry Strategy” we have tried to provide you key information with respect to Legal and Taxation aspects of above modes of doing business in India. Apart from this, one can invest through other modes such as Sole Proprietorship, Partnership firm, AOPs, etc. which are not covered in this note. We shall be happy to assist in case any assistance is required for these modes as well.

¹ Foreign Entities, Foreign Nationals and Non Resident Indians

² Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting



2. ENTRY MODES

2 (a) LIAISON OFFICE

Liaison Office is a place of business which acts as a communication channel between the Head Office and the Indian customers.

- It acts as a representative in India for its foreign company.
- It is not allowed to undertake any business activity and earn any income in India.
- Expenses of such offices are to be met entirely through inward remittances from its Head Office.
- The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about its foreign company and its products to the prospective Indian customers.
- This is preferred option by foreign companies to explore business opportunities in India.
- Foreign entities can set up Liaison Office in India after approval from the AD Bank¹.
- The funds can be repatriated only on closure of Liaison Office. Closure application has to be filed with the AD Bank with requisite documents.

A Liaison Office can undertake only following activities:

- Representing the parent company/group in India
- Promoting export/import from/to India
- Promoting technical /financial collaborations between parent company/group and Indian entities
- Acting as a communication channel between the parent company/group and Indian entities

Pre-requisites for setting up a Liaison Office:

- Requires AD Bank² approval which is valid only for 3 years³, extendable by application.
- Registration with Registrar of Companies (ROC).
- Profit making track record during previous 3 years in the home country.
- Investing Company should have net worth of at least USD 50,000 or its equivalent.
- An applicant that is not financially sound may submit a Letter of Comfort from its parent/ other group company which satisfies the prescribed criteria for net worth and profit.

¹ Application made from certain countries as well as for certain sectors requires approval of the RBI.

² Application made from certain countries as well as for certain sectors requires approval of the RBI.

³ Two years for NBFC and Construction/development sector

2 (b) BRANCH OFFICE

A branch office is an outlet or extension of a Foreign Company which is established to conduct business in India.

- The Branch Office should be engaged in the activity in which the parent company is engaged.
- Unlike Liaison Office, it can undertake commercial activities and earn profits. However, it shall not be recognized as a separate legal entity.
- Foreign entities can set up Branch Office in India after approval from the AD Bank¹.
- Profits can be freely repatriated to Parent company subject to payment of applicable Indian taxes.
- Application has to be filed with the AD Bank for closure along with requisite documents.

Branch Office can undertake the following activities:

- Export / Import of goods.
- Rendering professional or consultancy services.
- Carrying out research work, in areas in which the parent company is engaged.
- Promoting technical /financial collaborations between parent company/group and Indian entities.
- Representing the parent company in India and acting as buying / selling agent in India.
- Rendering services in information technology and development of software in India.
- Rendering technical support to the products supplied by parent /group companies.
- Representing a foreign airline/shipping company.

Restricted Activities:

- Retail trading activities of any nature.
- Manufacturing/processing activities directly or indirectly.
- Borrowing funds in India.

Pre-requisites for setting up a Branch Office:

- Requires AD Bank² approval.
- Registration with Registrar of Companies (ROC).
- Profit track record during previous 5 years in the home country.
- Investing Company should have net worth of at least USD 100,000 or its equivalent.
- An applicant that is not financially sound may submit a Letter of Comfort from its parent/other group company which satisfies the prescribed criteria for net worth and profit.

¹ Application made from certain countries as well as for certain sectors requires approval of the RBI.

² Application made from certain countries as well as for certain sectors requires approval of the RBI.

2 (c) PROJECT OFFICE

A project office is typically a trailer or short-term facility that is used as an office for a project.

- Like Branch Office, it shall not be recognized as a separate legal entity and can undertake commercial activities to earn profits.
- Project offices are generally preferred by companies engaged in one-time turnkey or installation projects.
- The funds can be repatriated only on closure of Project Office. However, AD Bank may permit intermittent remittances by project offices pending winding up / completion of the project subject to submission of certain prescribed documents.
- Application has to be filed with the AD Bank for closure with requisite documents.

Pre-requisites for setting up a Project Office:

- Requires AD Bank¹ approval which is valid for the tenure of the project.
- Registration with Registrar of Companies (ROC).

Conditions for setting up a Project Office:

Existence of a contract with an Indian Company to execute a project in India; **and at least one of the following:**

- The project is funded by inward remittance from abroad; or
- The project is funded by the Multilateral/Bilateral financing agencies or similar bodies; or
- The project has been cleared by an appropriate authority; or
- Indian entity awarding the contract has been granted Term Loan by a Public Financial Institution or a bank for the project



¹ Application made from certain countries as well as for certain sectors requires approval of the RBI.

2 (d) PRIVATE LIMITED COMPANY

CORPORATE LAW : PRIVATE LIMITED COMPANY

Governing Statute:

- Companies in India are governed by Companies Act, 2013 and rules made there under.
- Private Limited Companies can be incorporated with minimum 2 and maximum 200 members.
- Shareholders can be an individual or a body corporate.
- Liability of each shareholder is limited to the extent of amount of shares subscribed by them.

Share Capital:

Share capital is the money a company raises by issuing common (i.e. Equity Shares) or preferred stock (i.e. Preference Shares). Unlike listed company, shares of a private limited company are transferable subject to approval of the Board of Directors of the Company.

Management:

With regards to management of the company i.e. constitution of Board of Directors (BOD), there should be minimum 2 Directors, Director of the company can only be individual and at least 1 director should be residing in India for atleast 182 days in previous calendar year.

Incorporation Process:

The incorporation of a company, filing of various annual compliance papers and also dissolution of the company is carried out by e-filing of forms through MCA portal i.e. www.mca.gov.in with Registrar of Companies (ROC). Following are the pre-requisite for the online process:

- Digital Signature Certificate (DSC) - for all the directors.
- Director Identification Number (DIN) - for all the directors.

The broad process of incorporation of company is as under:

1. Selection of name

- a. 2 preferred names to be provided
- b. Name should be unique and not be similar to the names of any existing companies or trademark unless No objection certificate is obtained from such company

2. Filing incorporation document

a. Incorporation form is to be filed along with:

- ✓ Charter documents: Memorandum of Association and Articles of Association prepared in accordance with the needs of the business
- ✓ Proposed first directors of the company

- ✓ Proposed address of its registered office.
- ✓ Affidavits and declarations from subscribers which requires to be notarized/apostilled in the respective home countries
- ✓ Other required details
- ✓ Payment of stamp duty based on the authorized share capital of the company

b. Issue Certificate of Incorporation by the ROC

- ✓ The Certificate of Incorporation issued by the ROC at the end of the incorporation process acts as proof of the incorporation of the company.
- ✓ The said certificate also contains the PAN (Income Tax Identification number) and TAN (Identification number for Withholding taxes). One can also apply for GSTIN (Identification number for Goods & Service Tax) along with the Incorporation form.

c. Post Incorporation

- ✓ Within 30 days from incorporation, the company has to hold its first board meeting and appoint first auditor of the company.
- ✓ Printing of MOA, AOA ,Share Certificates, Letter heads and name plate for Company
- ✓ Open bank account & receive the share subscription money
- ✓ Issue of Share Certificates and payment of stamp duty
- ✓ File form 20A before commencement of business activities
- ✓ Updation of Statutory registers
- ✓ Obtain registrations under Profession Tax for itself and its employees and other business registrations

Accounting:

Company must prepare its accounts on the accrual basis of accounting Accounts have to be audited annually from Independent Chartered Accountants and approved by the members of the company in Annual General Meeting (AGM).

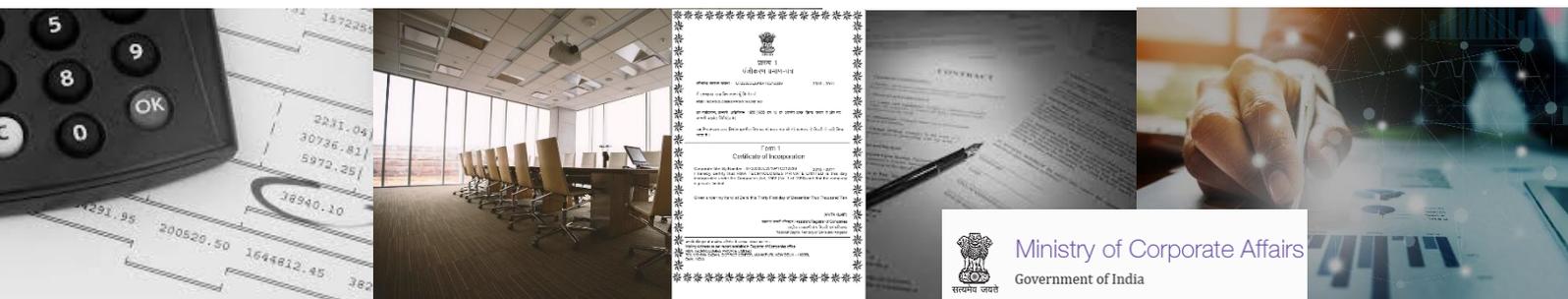
In India, there two different frameworks for preparing financials statements:

- Indian GAAP (IGAAP)
- Indian Accounting Standards (Ind AS)

Of the two, Ind AS converge closely with the International Financial Reporting Standards (IFRS) and ensures consistency in the accounting practices and principles followed by companies in India and other companies globally. Ind AS are compulsory for certain companies based on their listing status as well net worth criteria, however companies can voluntarily adopt Ind AS.

Other Compliances:

1. **Corporate Social Responsibility:** Every company with a net worth of INR 5 billion or more, or turnover of INR 10 billion or more or a net profit of rupees INR 50 million or more during any financial year is required to spend at least 2% of the average net profits of the company during the three immediately preceding financial years towards its corporate social responsibility obligations in specified purposes which broadly include eradication of poverty, malnutrition, environment protection, protection of national heritage, promoting education, rural sports, nationally recognized sports, setting up homes and hostels for women, orphans and senior citizens, reducing inequalities in socially and economically backward groups and support to technology incubators in academic, etc.
2. **Other Compliances:** Company have to comply with provisions of the Companies Act such as:
 - ✓ Conducting at least 4 meetings of Board of Directors and 1 AGM every year.
 - ✓ All directors should attend at least one board meeting.
 - ✓ Maintaining of minutes of meeting & statutory registers such as Members register, Fixed Assets Register, Register of charges, etc.
 - ✓ Submitting, Annual Audited accounts and Annual Return with ROC.
 - ✓ Informing ROC within prescribed time, any change in registered office of the company and directors of the company, creation or discharge of any charge created on the assets of the company, etc.





EXCHANGE CONTROL REGULATIONS : PRIVATE LIMITED COMPANY

Non Residents have to comply with Foreign Exchange Management Act 1999 (“FEMA”) and the delegated legislations thereunder.

Equity investment in an Indian Private Company by Non Resident is generally through Schedule I of FEM NDI Rules¹ referred as Foreign Direct Investment (“FDI”).

Under FDI, investment in a sector with/without performance linked conditions can be under:

- a. **Automatic Route**
- b. **Approval Route** : Prior approval of Government
- c. **Prohibited Activities**: Certain sectors are not open for investment by Non-Residents as listed below:

(1) Lottery Business including online lotteries	(2) Gambling and betting including casinos
(3) Chit funds	(4) Nidhi company
(5) Trading in Transferable Development Rights (TDRs)	(6) Specified Real Estate Business or Construction of Farm Houses.
(7) Manufacturing of Cigars, cigarettes, of tobacco or its substitutes	(8) Activities/ sectors not open to private sector investment (for e.g Atomic energy)
(9) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities	

Notes:

1. FDI limits with respect to the shareholding of Non-Residents in an Indian company have certain sectoral caps as given in the Annexure.
2. With effect from 22nd April 2020 FDI from neighboring countries which share land border with India will be subject to prior government approval for protecting Indian Companies from opportunistic takeover in the wake of the COVID-19 pandemic.

¹ Foreign Exchange Management (Non-debt Instruments) Rules, 2019.



2 (e) LIMITED LIABILITY PARTNERSHIP

LLP is a hybrid entity combining the features of body corporate and partnership firm.

- LLP can be incorporated with minimum 2 partners without any restriction for maximum number of partners.
- There is no minimum requirement for capital contribution.
- There has to be minimum 2 individual designated partners who would be responsible for ensuring statutory compliances under LLP Act. Where body corporate is a partner of LLP, nominees of such body corporate can act as designated partner.
- At least one of the designated partner has to be an Indian Resident.
- General process of incorporation shall include:
 - ✓ Obtaining DIN and DSC for Designated Partner,
 - ✓ Checking availability of name,
 - ✓ Form for incorporation and filing LLP Agreement.
- LLPs have to get their accounts audited in case contribution exceeds INR 2.5 Million or Turnover exceeds INR 4 Million.
- Annual Compliance for LLP includes:
 - ✓ Filing Statement of Accounts and Solvency
 - ✓ Annual Return

EXCHANGE CONTROL REGULATIONS : LLP

Foreign investment in LLP is permitted only in sectors where 100% FDI is permitted under automatic route without performance-linked conditions.



3. DIRECT TAX

I. Business Entity Level Taxation

- a) Company
- b) Limited Liability Partnership
- c) Liaison Office
- d) Branch Office & Project Office
- e) Other aspects of Business Entity Level Taxation

II. Investor Level Taxation

3. DIRECT TAX

Income tax is levied on persons / entities on their income accruing in India or received in India or on income deemed to be accrued or received in India depending upon the residential status in India of such persons / entities. Ordinarily Residents in India are taxed in India on their global income. Uniform Financial Year is to be followed by all tax payers i.e. 1st April to 31st March.

I. BUSINESS ENTITY LEVEL TAXATION

COMPANY

Domestic companies are subject to income tax on their global income. The income is to be computed as per the provisions of Income Tax Act.

Tax Rates for Domestic Companies			
Particulars	Company opting for Sec 115BAA	Company opting for Sec 115BAB	Other Company
Business of the Company	Any Business	Manufacturing/Production/ generation of electricity	Any Business
Eligibility Criteria	No specific requirement	Set up & registered ¹ after 30.09.19 AND Operations to start by 31.03.23)	No specific requirement
Basic Tax Rate	22%	15%	25% ² /30%
Surcharge on Basic tax (S)	10%	10%	0% /7%/12% ³
Cess (C)on Basic tax + Surcharge	4%	4%	4%
Effective Tax Rate	25.168%	17.16%	26% to 34.94%
Minimum Alternate Tax (MAT)	Not applicable	Not applicable	15% + S&C (Note 1)
Other points	Company opting for these options, will not be eligible to claim certain prescribed tax exemptions/incentives.		Eligible for tax incentives/exemptions

Note 1: Minimum Alternate Tax : If the tax payable by company on its taxable income is less than 15% of the book profit, then an amount equal to 15% of book profit (+ S & C) is regarded as the tax payable by such companies under MAT. Credit for tax paid under MAT shall be available for 15 years.

¹ Companies formed by restructuring or splitting up of existing business or using old machineries more than 20% of total machineries or using building used previously as hotel or convention centre are not eligible

² If Turnover in FY2018-19 is upto INR 4 Billion

³ If total income is more than INR 100 Million then 12% and if it is less than INR 100 Million but more than INR 10 Million then 7%.

LIMITED LIABILITY PARTNERSHIP

- Resident LLPs are also subject to income tax on their global income. LLPs are taxed at 30% plus 4% cess i.e. effectively @ 31.2% if income is up to INR10 Million.
- Where total income exceeds INR 10 million, tax amount is increased by 12% surcharge and 4% Cess ,i.e. effectively taxed @35.94%.
- Alternative Minimum Tax: In certain cases, where the tax payable by LLP on its taxable income is less than 18.5% of the Adjusted Total Income, an amount equal to 18.5 % (plus surcharge and cess) of Adjusted Total Income is regarded as tax payable by such LLP (also called as “AMT”). Credit for tax paid under AMT shall be available for 15 years.

Adjusted Total Income = Net Taxable income as increased by certain profit linked and other deductions.

LIAISON OFFICE

It is per se not subject to tax so long it is confined to activities permitted by RBI in India. However, conditions for Permanent Establishment needs to be checked.

Liaison Office are required to file an annual statement about the activities performed during the year with Income Tax Department.

BRANCH OFFICE & PROJECT OFFICE

Indian branches of foreign companies and its foreign company are considered as separate entity for taxation perspective. Based on the activity carried on in India, scope of their income is determined. They are taxed at rates applicable to foreign companies i.e. 40% plus applicable surcharge and cess¹.

OTHER ASPECTS OF BUSINESS ENTITY LEVEL TAXATION

- **Set off and Carry Forward of Losses:** Business Losses if not absorbed in the same financial year can be carried forward and set off against future years' incomes, up to 8 years. Unabsorbed depreciation can be carried forward and set off indefinitely without restriction of number of years. Conditions for carry forward of losses are required to be fulfilled. One of the conditions with respect to a private company is consistency of 51 % share holding pattern.
- **Corporate Group:** There are no provisions in India for consolidation of accounts for tax purpose for group taxation.

¹ If total income is more than INR 100 Million then 5% and if it is less than INR 100 Million but more than INR 10 Million then 2%.

- **Withholding taxes :**
 - ✓ Tax at the prescribed rate is required to be deducted at source from payments of certain specified character to residents such as rent, salary, professional fees, commission, royalty etc.
 - ✓ Similarly, tax is required to be deducted at appropriate rates on all payments made to Non Residents.
 - ✓ For transactions entered into with residents of countries with whom India has tax Treaty, tax has to be withheld as per rates specified in Indian Income Tax Law or rates specified in tax treaty whichever is beneficial subject to availability of Tax Residence Certificate (TRC).
 - ✓ However, if the Payee does not have a permanent account number (PAN) i.e. Indian Tax Identification number, the rate of withholding tax would be flat 20%. However, in case income is in the nature of interest, royalty, fees for technical services or capital gains, 20% rate shall not apply on production of TRC along with certain specified information.
 - ✓ For transactions entered into with residents of countries with whom India does not have tax Treaty, tax needs to be withheld as per rates specified under Indian Income Tax Law.

- **Transfer pricing regulations:** Transaction between Indian entity and its nonresident related party (Associated Enterprise) needs to be at arm's length price.
 - ✓ A detailed mechanism including method to determine arms-length price is provided in Indian Income Tax Law.
 - ✓ Tax officers are given powers to test the genuineness of transaction price. Where prices are not at arm's-length, tax officers have powers to increase taxable income by determining the arm's length price.
 - ✓ For this purpose, Transfer Pricing Report is required to be furnished annually.
 - ✓ Domestic Transaction between related parties shall be subject to transfer pricing on fulfilment of certain conditions.

- **Income Computation and Disclosure Standards (ICDS):** Notified ICDS have to be followed for computing income by all taxpayers including Individuals and HUF subject to Tax Audit.

INVESTOR LEVEL TAXATION : Refer section on Investment structure as given below



4. INVESTMENT STRUCTURE

a) **Private Limited Company**

- i) Instruments : Equity Shares, Preference Shares, Debentures & Loan
- ii) Other Modes For Investment By Non Residents
 - Special Provisions For NRI & OCI Cardholders
 - Foreign Venture Capital Investors
 - Investment Vehicles
 - External Commercial Borrowings

b) **Limited Liability Partnership**

4 (a) INVESTMENT STRUCTURE – PRIVATE LIMITED COMPANY

Particulars	Equity Instrument	Preference Shares	Debentures	Loan
Brief Description	Equity shares are ordinary shares in the share capital of a company and are entitled to voting rights and dividend rights.	<ul style="list-style-type: none"> • Preference shares are shares which carry a preferential right to receive dividends at a fixed rate as well as preferential rights during liquidation over the equity shares. • Preference Shares can be redeemable, convertible into equity shares either optionally or compulsorily. • Preference Shares can be issued for maximum period of 20 years. 	<ul style="list-style-type: none"> • Debentures are debt securities issued by a company, and typically represent a loan taken by the issuer company with an agreed rate of interest. • Debentures can be redeemable, convertible into equity shares either optionally or compulsorily. • Debentures can be secured or unsecured. Secured debenture can be for maximum period of 10 years. 	Loan can be based on the mutual agreement of the parties and can be secured or unsecured.
FEMA Provisions	Equity shares can be issued to Non-Residents subject to pricing guidelines and	<ul style="list-style-type: none"> • Compulsorily Convertible Preference Shares can be issued to Non-Residents subject to pricing guidelines 	<ul style="list-style-type: none"> • Compulsorily Convertible Debentures can be issued to Non-Residents subject to pricing 	ECB Regulations shall apply as discussed below.



Particulars	Equity Instrument	Preference Shares	Debentures	Loan
	reporting compliance under FDI Route.	and reporting compliance under FDI Route. <ul style="list-style-type: none">• For other type of Preference Shares ECB Regulations shall apply as discussed below.	guidelines and reporting compliance under FDI Route. <ul style="list-style-type: none">• For other type of Debentures ECB Regulations shall apply as discussed below.	
Repatriation/Repayment of Capital/Principal	Only by way of following ways: <ul style="list-style-type: none">• Buy back: Subject to Max. 25% per year out of profits & Debt equity ratio of 2:1 post buy back• Capital reduction: It is done through scheme of capital reduction approved by the court.	Preference shares can be redeemed out of free reserves or fresh issue of capital.	The Debentures can be repaid by way of redemption. For redemption of debentures, the company has to comply with requirement of creation of Debenture Redemption Reserves and parking of such funds.	Loan can be repaid as per the terms of the agreement subject to compliance with ECB regulations.
Return on Investment				
A) Mode of Return on Investment	Dividend or Buy back of Equity Shares by the Company or Capital gains on transfer of shares	Dividend or Premium on Redemption or Capital gains on sale of shares	Interest or premium on redemption	Interest



Particulars	Equity Instrument	Preference Shares	Debentures	Loan
B) Rate of Return	No cap on dividend if there are sufficient distributable profits.	No cap on dividend if there are sufficient distributable profits.	No cap on Interest on CCDs ⁴ .	All in cost rate is capped depending on the currency of loan.
C) Tax deduction to Indian Company	Dividend or profit distributed by way of Buy back or capital reduction is not tax deductible for the company. On Buy back, the company will have to pay tax @ 23.30% on income distributed ⁵ on buy back.	Dividend or profit distributed by redemption is not tax deductible.	Interest/premium paid on Debentures is generally tax deductible. (Note 1)	
D) Taxability in India in hands of Non Resident (Refer note 3 for Indirect Transfer)	<ul style="list-style-type: none"> Dividend distributed by the company will be taxable in the hands of investor @ 20% (+ S&C). Buy Back of Equity Shares is not taxable for the investor Long term Capital Gains on sale of shares shall be taxable @ 10% (+S&C) without adjustment for inflation and foreign exchange fluctuations Investor can avail Treaty benefit and lower rate may apply (Note 2).		Interest on INR Debt will be taxable for <ul style="list-style-type: none"> Foreign Company @ 40% (+ S & C) Other investors⁶ @ 30% (+ S & C), Investors can avail Treaty benefit and lower rate may apply (Note 2). Interest on foreign currency loan under Loan agreement before 01st July 2023 is taxable @ 5% (+ S & C).	

⁴ Subject to Transfer Pricing regulations

⁵ Consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares

⁶ Individuals can avail benefit of slab rates for income upto INR 1 million



Particulars	Equity Instrument	Preference Shares	Debentures	Loan
E) Indian Tax Reporting (ITR) Compliance and Indian Transfer Pricing (TP) to Non Resident	Generally, ITR & TP compliance has to be done by the Investor. But if investor only has Dividend Income and WHT @ 20% (+S&C) is done then no ITR filing obligation to Investor, but TP Reporting may still apply to Investor.		In case of INR debt, ITR & TP compliance has to be done by the Investor. In case Interest on Foreign Currency Loan is the only income and WHT @ 5%(+S&C) is done, then no return filing obligation to Investor, but TP Reporting may still apply to Investor.	

Notes:

1. Thin Capitalization under Indian Income tax law: Interest Expense is generally tax deductible for Indian Company. However in case of debt from foreign group entities, Interest/premium deduction⁷ in a year is capped to 30% of EBITDA provided it exceeds INR 10 Million. Any Excess interest not allowed as deduction can be carried forward for 8 years and adjusted as per the rules.
2. Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting: MLI has been effective from 01.04.2020 for certain countries, In case MLI is effective between both India and country of Residence, Investors have to satisfy eligibility under Tax Treaty which have now become far stricter in view of Principal Purpose Test in addition to availability of Tax Residency Certificate of respective country.
3. Indirect Transfer: Transfer of shares of foreign company or interest in any entity incorporated or registered outside India which derives its substantial value from assets located in India is commonly referred to as 'Indirect Transfer'. Indirect Transfer is triggered if Indian assets exceeds INR 100 million and represents at least 50% of value of total assets of such Foreign Company/Entity.

⁷ Including excess interest deduction of earlier years brought forward u/s 94B

OTHER MODES FOR INVESTMENT BY NON RESIDENTS

Apart from FDI route, Non Resident can also invest in equity or debt (ECB) through following modes.

SPECIAL PROVISIONS FOR NRI & OCI CARDHOLDERS

Non Resident Indians (NRIs) and Overseas Citizen of India (OCIs) including foreign companies, trust and partnership firm owned & controlled by them can invest on non-repatriation basis in equity and compulsorily convertible instruments of the company. The capital and appreciation thereon are not eligible to be repatriated outside India. At present RBI has permitted a window of USD 1 Million per financial year to remit such funds abroad for NRIs and OCIs. Such investment is treated as domestic investment at par with investment made by residents. The major advantages of such investments are non-applicability of FEMA provisions such as reporting compliances, sectoral caps, attendant conditions or valuation norms as applicable to other foreign investments. Current income such as dividend and interest on above investments are freely repatriable.

FOREIGN VENTURE CAPITAL INVESTORS

Non Resident registered as Foreign Venture Capital Investors ("FVCI") with SEBI can invest in equity as well as other instruments on repatriable basis. There are no pricing guidelines or reporting compliance. However, FVCI can invest only in following sectors:

- (a) Biotechnology;
- (b) IT related to hardware and software development;
- (c) Nanotechnology;
- (d) Seed research and development;
- (e) Research & development of new chemical entities in pharmaceutical sector.
- (f) Dairy industry;
- (g) Poultry industry;
- (h) Production of bio-fuels;
- (i) Hotel-cum-convention centres with specified seating capacity
- (j) Specified Infrastructure sector

INVESTMENT VEHICLES

Non Resident (other than a citizen or entity of Pakistan and Bangladesh) can invest in units of SEBI registered investment vehicles such as Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvIts) and Alternative Investment Funds (AIFs) on repatriable basis. The investment will be considered as domestic investment if the Sponsor/Manager/Investment Manager

is a resident Indian citizen or is an entity controlled by resident Indian citizen. Such vehicles can invest in shares and securities of Indian entity. Reporting compliance is applicable when the Non-resident investors are allotted units of the Investment vehicle.

EXTERNAL COMMERCIAL BORROWINGS

ECB can be in the form of loan or optionally/non-convertible instruments. Broad regulations governing ECB are as under

- **Eligible Borrowers:** All entities eligible to receive Foreign Direct Investment.
- **Eligible Lenders:** The lender should be resident of FATF¹ or IOSCO² compliant country. Foreign equity holder³ are also recognized lenders.
- **Ceiling, Interest and Maturity Period**
 - ✓ Max. amount = USD 750 Million per financial year
 - ✓ Debt equity ratio 7:1 shall apply in case of ECB from direct foreign equity holder exceeding USD 5 Million
 - ✓ Maturity period has been prescribed between 1-10 years depending on the end use and type of lender,
 - ✓ All in cost limit including interest = Benchmark rate⁴ + 450bps
- **Permitted end uses:** The ECB proceeds can be used for all purposes, except the following:
 - ✓ Specified Real estate activities
 - ✓ Investment in capital market
 - ✓ Equity investment
 - ✓ Working capital purposes, except from foreign equity holder
 - ✓ General corporate purposes, except from foreign equity holder
 - ✓ Repayment of Rupee loans, except from foreign equity holder
 - ✓ On-lending to entities for the above activities except by NBFCs for specified purposes.

¹ Financial Action Task Force

² International Organization of Securities Commission

³ It means direct foreign equity holder with minimum 25% direct equity holding in the borrowing entity, indirect equity holder with minimum indirect equity holding of 51%, or group company with common overseas parent.

⁴ Benchmark rate : For Foreign Currency ECB : 6-month LIBOR or its equivalent; For INR ECB : Government security yield rate of corresponding maturity

4 (b) INVESTMENT STRUCTURE - LLP

Particulars	Capital Contribution
Brief Description	Every partner contributes to form LLP as mutually decided by the partners in the LLP Agreement. Stamp Duty is levied on the amount of capital contribution mentioned in the LLP Agreement.
FEMA Provisions	Foreign investment in LLP is permitted only in sectors where 100% FDI is permitted under automatic route without performance-linked conditions subject to pricing guidelines and reporting compliance. However LLP is not eligible to avail ECB
Repatriation of Capital	The capital of LLP is repatriable. In case of transfer of capital contribution/Profit share pricing guidelines and reporting requirements shall apply.
Return on Investment:	
A) Mode of Return on Investment	Interest on capital and Share of profit
B) Rate of Return	Profit share will depend on the profit after tax on the LLP. Interest should be based on the rate specified in the LLP Agreement.
C) Tax deduction to LLP	Interest Expense upto 12% p.a is tax deductible. Cap of 30% of EBITDA u/s 94B does not apply in case of LLP
D) Taxability in India in hands of Non Resident	Share of Profit is exempt for Investor. Interest will be taxable for <ul style="list-style-type: none"> - Foreign Company @ 40% (+ S & C) - Other investors¹ @ 30% (+ S & C), Investors can avail Treaty benefit and lower rate may apply (See Note 2 of 4(a) <i>Investment Structure – Private Limited Company</i>).
E) ITR Compliance and Indian TP to Non Resident	Indian Tax Reporting (ITR) Compliance and Indian Transfer Pricing (TP) apply to Non Resident in case of Interest on Capital

Note: Like in case of company, NRIs OCIs can invest on non-repatriation basis in an LLP (except prohibited sector) without any conditions or reporting compliance subject to applicable limit on repatriation.

¹ Individuals can avail benefit of slab rates for income upto INR 1 million



5. INDIRECT TAX

India has a three-tier federal structure consisting of the Central Government, the State Governments and the Local Bodies. The Constitution of India assigns powers to these three bodies to legislate on different duties and taxes. Thus, for instance, in the erstwhile regime, while the States were empowered to levy Sales tax on sale of goods within that State while the Union Government was empowered to levy Sales tax on goods sold in the course of inter-state trade and tax on services, thereby resulting in different sales tax laws in each State and at the Centre.

The introduction of GST has proved to be a major reform in the indirect taxation structure of the country, subsuming a number of indirect taxes at the Centre level and the State level in one tax. The indirect tax in the country now comprises of three major levy: Customs Duty, Goods and Services Tax (GST) and Profession Tax.

GOODS AND SERVICES TAX (GST):

A consumption based tax, GST was introduced with the underlying objective of “one nation - one tax”. Reducing multiplicity of taxes and seamless flow of input tax credit are the highlighting features of GST.

1. Scope:

GST is levied on “supply” of all goods and / or services, thereby, covering within its ambit various forms of supplies like sale, transfer, exchange, barter, license, rental or disposal. Different tax legislations for goods and services have been done away with.

2. Exclusions:

Supply of alcoholic liquor is outside the levy whereas levy on supply of petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel has been postponed to a later date to be notified by the Government. Currently, excise duty and State tax is levied on these supplies.

3. Nature of Levy

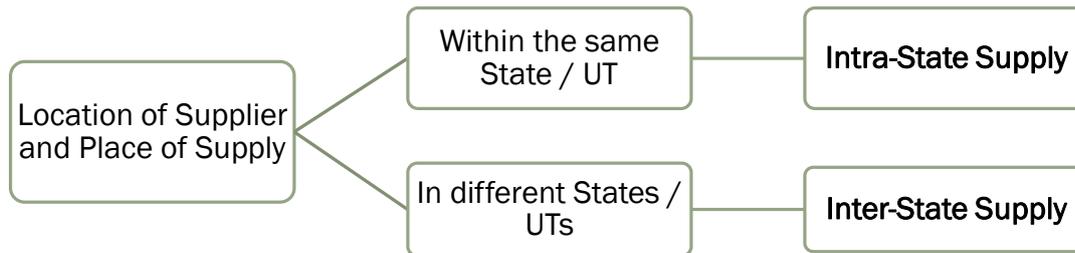
A dual structure is adopted wherein both the Centre and the States / UT's have the power to levy the tax as follows while the majority of the provisions remain uniform:

- a) Central Goods and Services Tax (CGST) – levied by the Centre on supplies within a State / UT (Intra-State Supplies).
- b) State / UT Goods and Services Tax (CGST) – levied by the State / UT on supplies within a State / UT (Intra-State Supplies).

- c) Integrated Goods and Services Tax (IGST) – levied by the Centre on supplies between two States / UTs (Inter-State Supplies).
- d) Compensation Cess – levied by the Centre on specified supplies to compensate the States for loss of revenue on account of introduction of GST.

4. Intra-State and Inter-State Supplies:

The law prescribes provisions to determine the nature of supply as an intra-state supply or an inter-state supply to determine levy as mentioned above.



Additionally, import of goods and services, Export and supplies to or by a Special Economic Zone Unit are treated as inter-state supplies.

As a general rule, the place of supply of goods is the location of delivery and the place of supply of services is the location of the recipient. There are certain exceptions carved out in the law.

5. Rates of Tax:

All the goods and services are classified based on the Harmonised System of Nomenclature (HSN) and Services Accounting Code (SAC) into four tax rates: 5%, 12%, 18% and 28%. While the essential goods such as food-grains are either exempted or taxed at 5%, luxury goods are taxed at the higher rates. Majority of the goods and services attract tax at the rate of 18%. Certain goods as notified by the Government may attract cess in addition to tax at such rates.

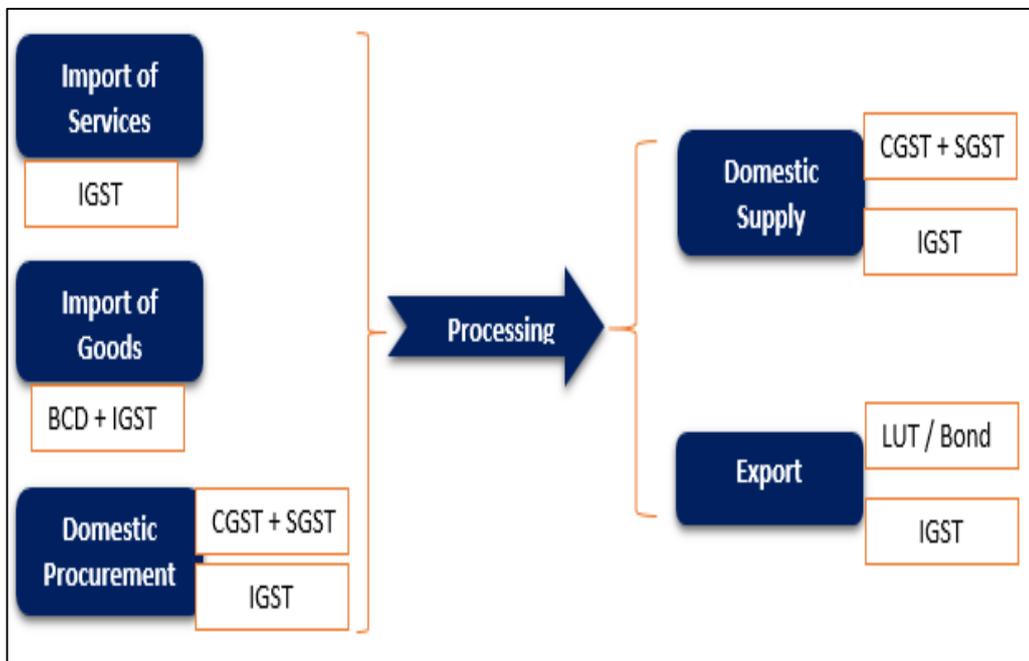
6. Input Tax Credit:

The taxes paid on procurement or services availed are available as input tax credit against tax payable on the supplies, thereby, enabling tax on value addition and mitigating dual taxation. Input Tax Credit is, however, not available in respect of certain specified procurements or services availed as laid down by the law.

CUSTOMS DUTY:

Customs Duty is a duty levied by the Central Government on Import and Export of goods. Currently, Basic Customs Duty at 10% is levied on imports whereas no duty is levied on exports except for certain goods. Where the buyer and seller are not related and price is the sole consideration, the duty is levied on the transaction value, i.e., the price paid or payable for the goods.

Thus, while the imports attract Basic Customs Duty (10%), Customs cess (3%) and IGST (18%), the exports attract IGST (at the rate notified for the specific goods) which is refundable or exports may be made at zero rate on execution of a Letter of Undertaking / Bond. The unutilised input tax credit, if any, is refundable, subject to fulfilment of certain conditions, where export is made on execution of a Letter of Undertaking / Bond.



PROFESSIONAL TAX:

The Professional tax is levied and collected by the State Government on professions, trades, callings and employments. It is a tax that is deducted from the salary of the employees and remitted to the Government by the employer and also paid by person carrying on business. Currently, not all the States levy professional tax, In the States where such levy exists, it is levied based on income slabs and in any case, not exceeding INR 2,500/- annually.



6. LABOUR LAWS

For a business to operate smoothly, it has to comply with all the applicable laws including labour laws. Labour law defines the rights and obligations of workers, union members and employers in the workplace. Under Indian Constitution, both Central as well as State Governments are empowered to enact legislation in relation to labour laws. Various legislative, administrative and e-governance initiatives have been taken by the Central Government and State Governments to generate employment and to facilitate ease of doing business.

OVERVIEW OF KEY LABOUR LAWS:

1. Industrial Disputes Act, 1947

The objective of the Industrial Disputes Act is to secure peace and harmony. This act covers industrial disputes, industrial actions like strikes and lockouts, layoffs, closures, transfer undertakings, etc.

2. Shops and Commercial Establishments Act

The Shop and Commercial Establishments Act is state specific which regulates service conditions of employees engaged in shops and commercial establishments, and it mainly includes most private companies and firms.

3. Provident Fund and Miscellaneous Provisions Act, 1952

Under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, an employee is required to contribute certain percentage to Employees Provident Fund and an equal contribution is paid by the employer. On retirement, employee gets both employer and employee contribution along with interest.

4. Factories Act, 1948

The Factories Act regulates the working conditions in factories where any manufacturing operations are undertaken to ensure safety and promote health and welfare of workers employed in factories.

5. CODE ON WAGES, 2019

Code on wages is aimed towards consolidation, rationalisation and simplification of labour related regulations. Code on Wages, 2019, is applicable to employees in organised and unorganised sector. The Code on Wages, 2019, has subsumed the payment of Wages Act, 1936, The Minimum Wages Act, 1948, The Payment of Bonus Act, 1965, and The Equal Remuneration Act, 1976.

Every country has its set of Labour Laws that the business organizations have to take in consideration. Similarly, in India, it is necessary to ensure the statutory compliance under various labour laws. Labour Laws not only protect the labour and employee's rights but also the employer. They act as a bridge among the employer and employee for the smooth working of the enterprises. There are various other Labour Laws which apply to the enterprises such as Industrial Employment (Standing Orders) Act, Trade Unions Act, Contract Labour (Regulations and Abolition) Act, etc and enterprise should ensure due compliance with all applicable labour laws.



7. RECURRING COMPLIANCES

Few important recurring compliances for the investment modes are as under:

Compliances	Liaison Office	Branch Office	Project Office	Private Company	LLP
Statutory Audit	Yes	Yes	Yes	Yes	If Turnover > INR 4 Million OR Contribution > INR 2.5 Million
Tax Audit	NA	If Turnover > INR 10 Million			
Transfer Pricing Audit	NA	Yes	Yes	Yes	Yes
GST Audit	NA	If Turnover > INR 20 Million			
Income Tax Return	Annually	Annually	Annually	Annually	Annually
TDS Return	Quarterly	Quarterly	Quarterly	Quarterly	Quarterly
GST Return	NA	Monthly/ Quarterly and Annually			
Activity Certificate	Annually	Annually	Annually	NA	NA
Filing Annual Accounts with ROC	Form FC - 3	Form FC - 3	Form FC - 3	Form AOC - 4	LLP Form 8
Filing Annual Accounts with Directorate of Income Tax, New Delhi	Yes	NA	NA	NA	NA
Filing Annual Return	Form FC - 4	Form FC - 4	Form FC - 4	Form MGT - 7	LLP Form 11

ANNEXURE I : SECTORAL CAPS UNDER FDI ROUTE

No.	Sector	Sectoral Cap	Entry Route
1	Agriculture and Animal husbandry	100%	Automatic subject to conditions
2	Plantation	100%	Automatic subject to conditions
3	Mining		
3.1	Mining and exploration of all metal and non-metal ores except for titanium bearing minerals and ores	100%	Automatic
3.2	Coal and Lignite	100%	Automatic
3.3	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated	100%	Government subject to conditions
4	Petroleum and Natural Gas		
4.1	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/ pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic
4.2	Petroleum refining by the Public Sector Undertakings (PSUs), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
5	Manufacturing	100%	Automatic
6	Defence	100%	Automatic upto 49% beyond that Government approval is required subject to conditions
7	Broadcasting		
7.1	Broadcasting Carriage Services	100%	Automatic subject to conditions
7.2	Broadcasting Content Services		
	Terrestrial Broadcasting FM (FM Radio),subject to terms and conditions by Ministry of Information and Broadcasting, for grant of permission for setting up of FM Radio stations.	49%	Government
	Up-Linking of 'News & Current Affairs' TV Channels	49%	Government
	Up-linking of Non-'News & Current Affairs' TV Channels/ Downlinking of TV Channels	100%	Automatic subject to conditions
8	Print Media		



No.	Sector	Sectoral Cap	Entry Route
8.1	Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government
8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government
8.3	Publishing or printing of Scientific and Technical Magazine or specialty journals or periodicals, subject to regulations specified by ministry of Information and Broadcasting	100%	Government
8.4	Publication of facsimile edition of foreign newspapers	100%	Government
9	Civil Aviation		
9.1	Airports	100%	Automatic subject to conditions
9.2	Air Transport Services		
	- Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline -Regional Air Transport Service	100%	Automatic upto 49% subject to conditions (for NRIs and OCIs 100% automatic) Government approval required beyond 49%
	-Non-Scheduled Air Transport Service	100%	Automatic subject to conditions
	-Helicopter service or seaplane services requiring Directorate General of Civil Aviation approval	100%	Automatic subject to conditions
9.3	Other Services under Civil Aviation sector	100%	Automatic subject to conditions
10	Construction Development: Townships, Housing, Built-up infrastructure	100%	Automatic subject to conditions
11	Industrial Parks	100%	Automatic subject to conditions
12	Satellites - Establishment and operation	100%	Government
13	Private Security Agencies	49%	Government
14	Telecom services	100%	Automatic upto 49% beyond that Government approval required + PLC
15	Trading		
15.1	Cash and Carry Wholesale Trading/ Wholesale Trading (including sourcing from MSEs)	100%	Automatic subject to conditions
15.2	E-Commerce	100%	Automatic subject to conditions
15.3	Single Brand Product Retail Trading	100%	Automatic upto 49% beyond that Government approval required subject to conditions
15.4	Multi Brand Retail Trading (MBRT)	51%	Government subject to conditions
15.5	Duty Free Shops	100%	Automatic subject to conditions



No.	Sector	Sectoral Cap	Entry Route
16	Pharmaceuticals		
	-Greenfield	100%	Automatic subject to conditions
	-Brownfield	100%	Automatic upto 74% beyond that Government approval required subject to conditions
17	Railway Infrastructure	100%	Automatic subject to conditions
18	Financial Services		
18.1	Asset Reconstruction Companies	100%	Automatic subject to conditions
18.2	Banking - Private sector	74%	Automatic upto 49% and government approval required beyond 49% but upto 74% subject to conditions
18.3	Banking - Public Sector	20%	Government
18.4	Infrastructure Companies in the Securities Market	49%	Automatic
18.5	Commodities Spot Exchange	49%	Automatic
18.6	Power Exchanges	49%	Automatic subject to conditions
18.7	Credit Information Companies	100%	Automatic subject to conditions
18.8	Insurance	49%	Automatic subject to conditions
18.9	Pension Sector	49%	Automatic subject to conditions
18.10	Other Financial Services	100%	Automatic subject to conditions

Note: The sectors may be guided by certain conditions even under Automatic route. It is suggested that the sector-specific conditions are referred for determining eligibility before foreign investment is infused.

When You Win,
We Win!



Address:

Benefice Business House, 3rd Level,
126, Mathuradas Mills Compound,
N. M. Joshi Marg, Lower Parel (W),
Mumbai – 400013, India

Contact Details:

T: +91 22 3321 37 37

Email: reachus@gbcaindia.com

Website: <https://gbcaindia.com>

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