INVEST INDIA
NATIONAL INVESTMENT PROMOTION & FACILITATION AGENCY

Ease of Doing Business Series

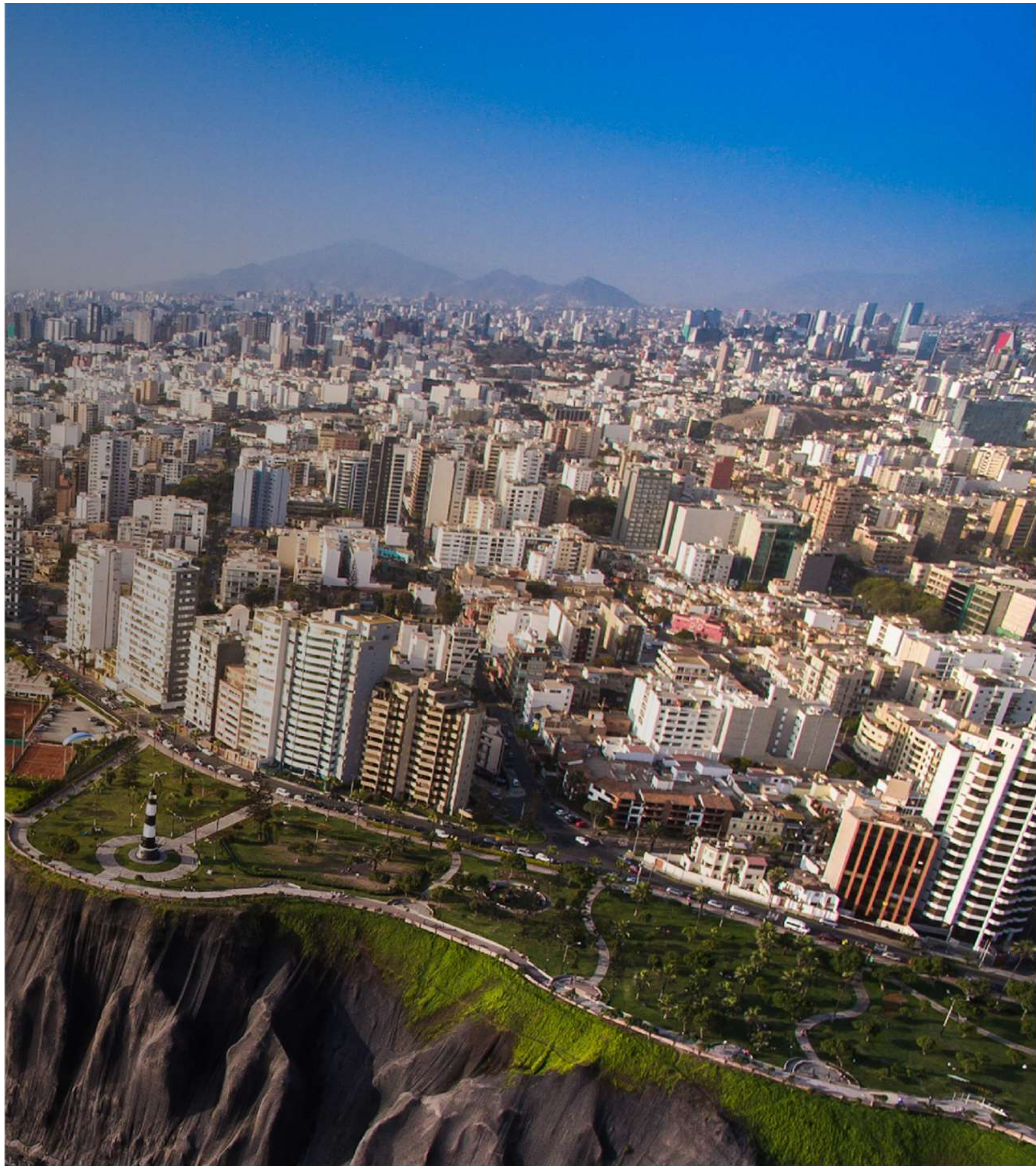
SIMPLIFYING TAXATION IN INDIA

#DoingBusinessInIndia

INVEST INDIA.GOV.IN

Taxation overview and trends

- India has taken steps to progessively reduce tax rates to bring itself at par with other global economies
- Tax incentives are provided to new manufacturing companies, startups, units operating in International Financial Services Centre ('IFSC')
- Digitisation is a key focus area – Online return filing, audits and appeals, electronic invoicing and real-time submission of transaction data has been implemented. Various tax and regulatory agencies are digitizing and collaborating through Project Insight. This shared data is used to guide tax assessments and audits
- As a member of the G20 and an active participant of the BEPS project, India has been amending its domestic tax law as well as tax treaties. India is a signatory to the MLI



Corporate tax rates

Type of taxpayers	Base tax rates	Effective rate
Partnership firm/ LLP	30%	34.94%
Domestic company*	22%	25.17%
Domestic company (manufacturing)*	15%	17.16%
Domestic company (with turnover less than INR 400 Crores in FY 2021-22)	25%	29.12%
Other domestic company	30%	34.94%
Foreign company/ branch	40%	43.68%
*To be computed without availing specified deductions/exemptions and to be specifically opted for subject to fulfillment of prescribed conditions		

Notes:

- Effective rate is calculated by increasing the base tax rates by the highest rate of surcharge and cess
- A company, other than a company which is liable to pay tax at the rate of 22% or 15%, is liable to pay Minimum Alternate Tax ('MAT') at the rate of 15% of book profit (plus surcharge and cess) where normal tax liability is less than 15% of book profit
- For Firm/ LLP, Alternate Minimum Tax (AMT) shall be applicable at the rate of 18.5% of book profit (only if the Firm/ LLP earns income which is subject to specified tax holiday/ exemption)
- Transfer pricing compliances need to be undertaken on an annual basis

INVEST INDIA.GOV.IN

Tax rate for certain transactions

S.N.	Particulars	mpany/Individual Investor
1	Royalty/ fees for technical services	20% (on gross basis) (treaty rate could be lower/ nil)
2	Dividend from shares	20%#
#Dividend received from a unit in an International Financial Services Centre shall be taxable at the rate of 10%		

S.N.	Particulars	Type of gain	Foreign company	Other non-resident investors
1	(a) Listed equity shares (b) units of equity oriented mutual funds and units of business trusts on which STT has been paid* *(indexation and foreign currency fluctuation benefit not available)*	LTCG	10%	10%
		STCG	15%	15%
2	(a) Listed bonds or debentures (b) Listed securities on which STT has not been paid i.e., off market transaction (c) Unlisted securities	LTCG	10%	10%
		STCG	40%	30%
* Taxable in excess of 1,00,000 only in case of LTCG and Condition of STT being paid not applicable in case transfer took place in IFSC				

Note 1: Tax rates will be increased by applicable surcharge and cess
Note 2: Highest applicable surcharge rates for foreign companies is 5%
Note 3 : The withholding tax rates can be higher in certain cases such as non-availability of Indian tax registration / non-availability of TRC
Note 4: Taxpayers can seek an advance ruling/ lower withholding tax certificate in appropriate cases

Equalisation levy (EL)

EL 1.0 – Online advertisements

- India introduced a 6% EL from June 2016 for B2B transactions (EL 1.0)
- The scope was limited to online advertisement services or any provision for digital advertising space or any other facility/ service for the purpose of online advertisement

EL 2.0 – E-commerce

- With effect from 1 April 2020, EL 2.0 has been introduced
- Obligation on an e-commerce operator, not having a PE in India, to pay 2% EL if sales/ turnover/ gross receipts exceed INR 2 cr and the transaction is not covered under EL 1.0
- E-commerce operator defined to mean a NR who owns, operates or manages a digital or electronic facility or platform for online sale of goods or online provision of services or both

INVEST INDIA.GOV.IN

Funding options

Key considerations

- Compulsorily convertible instruments qualify as capital under exchange control regulations and are subject to FDI guidelines
- Characterisation under tax laws may be different; compulsorily convertible debentures typically qualify as debt till conversion into equity
- ECB can be availed by an Indian company for most end-uses except for a negative list; ECB can be repaid subject to compliance with minimum maturity norms
- Typically, debt funding (loan/ debentures) is preferred for intra-group transactions due to tax efficiencies
    - Concessional tax rate in India on interest income of the foreign lender (5%/ 20%/ treaty rate)
    - Interest expense is usually deductible for the Indian company (25% tax deduction) (subject to compliance with withholding tax provisions, transfer pricing and thin capitalization norms)

Acquisitions/ exits

	Acquisition/ transfer of shares	Acquisition/ transfer of business
Types	• Direct transfer • Indirect transfer	• Slump sale • Itemised sale
Valuation rules	Applicable for buyer and seller (see next slide)	• Applicable for seller in slump sale/ for specific assets for seller in itemised sale • Applicable for specific assets for buyer
Income-tax implications	• Typically, capital gains taxation for the seller • Buyer may need to withhold tax • No cost step-up for business assets	• Typically, capital gains taxation for the seller • Additional layer of tax on distribution for the seller • Withholding tax may not apply • Cost step-up for business assets may be available subject to valuation
Past tax losses	May lapse if shareholding of the target changes by more than 49%	Not available to the buyer
Past liabilities	Remain with the target and hence, comprehensive due-diligence needed	Do not typically move with the business; however, NoC from tax authorities may be needed
Transaction cost	Typically lower	Typically higher especially if there is immovable property

Valuation rules

Acquisition/ transfer of shares

- Transactions for sale or purchase of securities generally to be at or above fair value (FV)
- Transactions undertaken at value lower than FV could lead to below implications:
  - For the Buyer, amount equal to FV (-) transaction value, taxable as ‘other income’; cost step up available to the extent of FV
  - For the Seller, FV deemed to be the sale consideration for computing capital gains

Primary infusion

- Issue of shares, if above the face value, needs to be made at or below FV. Else, premium-FV becomes taxable in the hands of the Indian issuer company
- Investor exemptions (NR) – Central banks, sovereign wealth funds, Government organisations, banks and insurance companies, following entities from notified countries – FPIs, endowment funds, pension funds, broad-based pooled investment funds
- Issuer company exemptions – Eligible start-ups, VC undertakings (investment from VC Funds/ CAT I or CAT II AIFs)

INVEST INDIA.GOV.IN

Assessment procedure

Return

- Annual return filing requirement for Indian companies as well as foreign companies earning taxable income from India (except where the foreign company earns only specified income streams where WHT is deducted at the rate specified in the Indian domestic tax laws)
- Return filing as well as processing is online
- Time limit of 9 months for processing the tax return

Assessments

- Time limit for initiating audit/ assessment – 15 months from the end of the relevant FY
- Assessment can be reponed within 4 years from the end of relevant FY or 11 years from the end of the relevant FY (subject to certain additional conditions)

Hierarchy of tax authorities → Assessing officer → Commissioner of Income-tax (Appeals)/ Dispute Resolution Panel → Income-tax Appellate Tribunal → High Court → Supreme Court

Alternate remedies such as obtaining advance rulings, advance pricing agreement, mutual agreement procedure, lower withholding tax certificates, etc can also be explored in specific cases

Indirect Taxes

- Goods and Services Tax ('GST') is a unified tax system that replaced multiple indirect taxes levied by both the Central and State Governments
- Under GST, both the Central and State Governments share the authority to levy and collect taxes on goods and services
- The GST system follows a dual structure, comprising Central GST (CGST) and State GST (SGST), levied concurrently by the Central and State governments, respectively. Additionally, an Integrated GST (IGST) is levied on interstate supplies and imports, which is collected by the Central Government but shared with the destination state.
- GST allows for the utilization of input tax credit, wherein businesses can claim credit for the tax paid on inputs and input services used in the production or provision of goods and services. This helps avoid cascading of taxes and reduces the overall tax liability
- The Government has introduced an online portal, for registration, filing of returns, payment of taxes, and other compliance-related activities which has streamlined the compliance process and made it easier for taxpayers to fulfill their obligations

INVEST INDIA.GOV.IN

Indirect Tax – Major tax rates

0%

Goods
Covers 10 % of the total commodities covered - Milk, natural honey, fresh fruits and vegetables, salt, natural honey etc.

Services
Healthcare, education, metro & non-AC train travel

5%

Goods
Covers 20 % of the total commodities covered - coal, sugar, specified pre-packaged items like lassi, curd etc.

Services
Goods transport agency, AC train travel, economy class air travel

12 %

Goods
Covers 18% of the total commodities covered - Medicines, toys and games, fruit juices, paintings, fertilizers, etc

Services
Business class air travel, hotel accommodation as specified etc.

18 %

Goods
Covers 34 % of the total commodities covered – Iron and steel, articles of iron and steel, insecticides, etc

Services
Financial services, telecom, IT services, etc

28%

Goods
Covers 17 % of the total commodities covered – Motor cars, cement, pan masala

Services
Betting, admission to casinos, race clubs

INVEST INDIA.GOV.IN

Indirect Taxes:
Continuous refinements

- Continuous rate rationalization to simplify the GST tax rate slabs.
- Decriminalization of several offences in the budget for FY 2023-24.
- Measures to eliminate the inverted duty structure under GST.
- Proposed setup of GST Tribunal under GST law for faster dispute resolution.
- Measures to further streamline the seamless flow of input tax credit under GST by eliminating various constraints related to unique business environment of India.
- Continuous changes on GSTN portal to strengthen the reporting and simplifying the GST compliances.
- Simplification of refund claiming measures through IT driven system, limited document requirements and clarifications by the government.

INVEST INDIA.GOV.IN

Incentives in India

Central Incentives | PLI

Capital Expenditure based incentives/subsidies in form of percentage of capex as cashback or percentage of sales under Production Linked Incentives (PLI) Schemes*

Bonded Manufacturing / MOOWR

Deferrment of Import Duty on raw materials and Capital goods **MOOWR Scheme - Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019.**

State Incentive Policies

Incentives based on Investment or Employment in form of **One-time or Recurring Incentives** - Stamp duty, State Goods and Services Tax (GST), Electricity duty, etc.

Foreign Trade Policy 2023

Import duty exemptions in respect of certain schemes like EOU, AA, etc and export Incentives under the newly announced FTP 2023.

** Application window for PLI schemes has been closed until further announcements.*

INVEST INDIA
NATIONAL INVESTMENT PROMOTION
& FACILITATION AGENCY