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DOING BUSINESS IN INDIA

MAY | 2021

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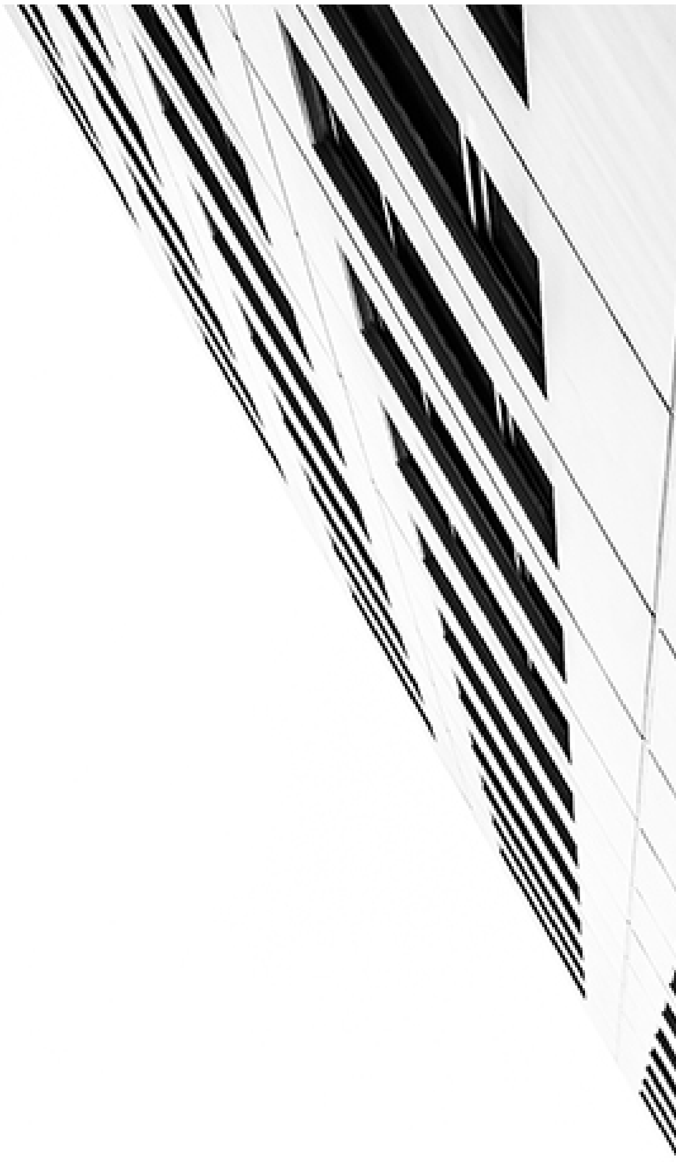

About UJA

India is an attractive destination for foreign investors and several foreign companies are looking at India to set up their commercial presence. However, owing to India's multi - cultural and diverse markets, the risks associated with venturing into the Indian territory are several. Over the last 25 years, UJA has grown to become a one – stop solution for international companies intending to set up their business operations in India. Similarly, we also handhold and support domestic companies/SMEs go global.

UJA is headquartered in Pune and with branch offices in Mumbai, Gurugram and Bengaluru. Internationally, UJA is present in France, Italy, Germany, Spain, Japan, Dubai and Vietnam.

UJA provides a single window solution for services which include – Market Entry Advisory, Business Consulting, Company Incorporation Services, Legal Services, Audit and Assurance, Taxation, International Taxation and Transfer Pricing, Mergers and Acquisitions, Accounting and FDI advisory.

INDIA

ASIA

EUROPE

Foreword

India has been a lucrative investment option for foreign companies. Over the years, several major reforms have been implemented to give India a competitive edge.

The year 2020 has been unprecedented and challenging for the world at large. The sudden lockdowns instituted by Government around the world to curb the spread of COVID - 19 brought an abrupt halt to almost all economic activity, suspension of travel – both domestic & international, overnight shift to remote working & several other consequential changes which were alien to human imagination.

The sudden lockdowns also brought about economic disharmony in the country. Several organizations went out of business and had to be shut down.

In order to restore normalcy and bring on track the economy, the Government rolled out economic stimulus packages. As a part of the Atmanirbhar Bharat Abhyan, numerous Government decisions were taken such as changing the definition of MSMEs, boosting scope for private participation in numerous sectors, increasing FDI in defense sector etc. All these initiatives were a direction to make India a bigger and larger part of the global economy.

The seeds for a dynamic and robust self - reliant India were sown way back in 2014 when Hon'ble Prime Minister Narendra Modi first launched 'Make in India' in 2014 to transform India into a global design and manufacturing hub. Subsequently, in January 2016, the Startup India platform was announced which intended to catalyze startup culture and build a strong and inclusive ecosystem for innovation and entrepreneurship in India. The Government has been working on initiatives to create a conducive environment to streamline compliance procedures & eliminate unnecessary regulatory burdens.

The Production Linked Incentive Scheme (PLI) is another incentivizing scheme in the same direction. The Ministry of Labour and Employment introduced four bills on labour codes to consolidate 29 central laws. The idea here was to broaden the scope of coverage, rights and protections, reduce multiplicity in definitions and embrace digitization in registrations and compliance and make the system more transparent and attractive to foreign investors.

Efforts are consistently being made by different stakeholders to elevate the domestic policies in concurrence with global trends to make India an attractive investment destination.

India certainly has all the elements to make it a world class manufacturing hub – a huge youth population, investor friendly policies, competitive tax rates, educated & talented workforce and many more. But, efficient utilization of these to promote growth and put India on the world map are of utmost importance. Slowly and steadily reforms have been introduced to give India a competitive edge & there is certainly a long way to go. However, it is imperative to keep going at a consistent pace and embrace and implement polices to make India conducive for foreign investment.

In this document we have tried to simplify and decode primary areas that affect foreign companies intending to set up and do business in India. Some of these include – legal entities for set up in India, taxation in India, regulatory requirements etc.

INDIA at a Glance

- Economy of India
- Investment Promotion Reforms
- Statistics

India officially the Republic of India is a country in South Asia. It is the second-most populous country, the seventh-largest country by land area, and the most populous democracy in the world.

The Indian peninsula is separated from mainland Asia by the Himalayas. The country is surrounded by the Bay of Bengal in the east, the Arabian Sea in the west, and the Indian Ocean to the south. India shares land borders with Pakistan to the northwest, China and Nepal to the north, Bhutan to the northeast, and Bangladesh and Myanmar to the east.

India has a long coastline. The west coast borders the Arabian Sea and the east coast the Bay of Bengal, both parts of the Indian Ocean.

India experiences at least three seasons a year - summer, monsoons and winters. The north experiences heat in summer and cold in winter. November to January is the winter season and April to May the summer season. India also experiences a brief spring in February and March.

India's rich and multi-layered cultures are dominated by religious and spiritual themes. India's cultural heritage is expressed through myriad of languages, classical and folk dances, art and theater, great literature and poetry.

India is divided into 28 states and 8 union territories. The states are broadly demarcated on linguistic lines. The vary in size. The union territories are smaller than states.

Hindi is recognized as the official language of the Union Government with English acting as a subsidiary official language. There are several other regional languages such as Tamil, Kannada, Malayalam, Bengali which are spoken across different states.

India is a diverse country with vast differences in geography, climate, culture, language and ethnicity across it's expanse, and prides itself on being a hub of trade in South East Asia.

Economy of India

India's economy is characterized as a developing market with an exponential consumer base. India has emerged as the fastest growing major economy in the world and is expected to be one of the top three economic powers in the world over the next 10 – 15 years backed by robust democracy and strong partnerships.

The long-term growth perspective of the Indian economy remains positive due to young population, healthy savings, an increase in globalization and integration into the global economy. India's international trade has shown a sharp upward trend since liberalization in 1991. Until 1991, India was largely isolated from the global markets in order to achieve self – reliance.

In 2020, India's ten largest partners were United States of America, China, UAE, Switzerland, Germany, Hong Kong, Indonesia, South Korea and Malaysia. In 2019 – 2020, the foreign direct investment (FDI) in India was $74.4 billion with the service sector, computer, and the telecom industry remained the leading sectors in FDI inflows. The service sector makes up 50% of GDP and remains the fastest growing sector, while the industrial sector and the agricultural sector employs the majority labor force.

Historically, India has classified and tracked it's economy and GDP in three sectors – agriculture, industry and services. Agriculture includes crops, milk and animal husbandry, fishing, forestry, horticulture and related activities. Industry includes various manufacturing sub – sectors. India's definition of service industry includes construction, hospitality, communications, banking and insurance, software, IT and many other economic activities.

While India's economy is largely agrarian it has a booming service sector including construction, infrastructure, healthcare, banking and insurance amongst many others. The service sector alone accounts for 55.60% of the total GDP.

Investment Promotion Reforms

Investment promotion includes a variety of activities undertaken by Central and State Governments aimed at boosting economic growth and employment. These activities have been a constant endeavor of most Governments. The Government recognizing the necessity of investment promotion has taken several reforms to boost investments in India.

The aim is to create a conducive business environment by streamlining the existing regulations and processes and eliminating unnecessary policies and procedures. Several regulatory reforms have been implemented by Central and State Governments to deliver seamless services to businesses. Technology has been identified as a key driver to improve efficiency.

Major Reforms

01 Launch of web – based SPICE+ forms has enabled new company incorporation in three steps in compared to the previously fourteen step process. It acts as a single form for company details.

02 Introduction of Insolvency and Bankruptcy Code 2016 is a major step forward in Corporate Insolvency Resolution Process (CIRP).

03 To provide a major boost to manufacturing, the government has launched Production-Linked Incentive (PLI) Scheme for 13 sectors. It is expected that the PLI scheme for shortlisted sectors will make Indian manufacturers globally competitive, attract investment, create economies of scale, enhance exports and make India an integral part of global supply chain.

04 Entrepreneurs are required to seek clearance from various authorities for setting up their business. To facilitate and support businesses the Government is setting up a central Single Window System (Investment Clearance Cell) in the form of a national portal that will integrate the existing clearance systems of the various Ministries/Departments of Govt. of India and State Governments

05 The Government is working closely on 24 sub-sectors chosen on Indian industries strengths and competitive edge, need for import substitution, potential for export and increased employability. Efforts are on to boost the growth of the sub-sectors in a holistic and coordinated manner.

06 The Central Government has taken a major initiative to enact four labour codes by simplifying, amalgamating and rationalising the relevant provisions of the existing labour laws. The amalgamation is aimed to transform obsolete labour laws into more accountable ones and make India more attractive for foreign investment.

Statistics

Currency
- Indian rupee(INR ₹) often called Indian National Rupee

Fiscal year
- April – 31 March

Main industries
- Textiles
- Chemicals
- Food Processing
- Agribusiness
- Handicrafts
- Petroleum
- Petrochemicals
- Gems And Jewellery
- Leather

Exports
- $513 billion (2020–21)

Export goods
- Agricultural products 12%
- Fuels and mining products 18.5%
- Manufacturers 68.7%
- Others 0.8%[28]

Main export partners
- United States 16.8%
- European Union 14.6%
- United Arab Emirates 9.1%
- China 5.3%
- Hong Kong 3.6%
- Other 50.5%[28]

Imports
- $604 billion (2020–21)[27]

Import goods
- Agricultural products 5.5%
- Fuels and mining products 38.6%
- Manufacturers 47.9%
- Other 8%[28]

Main import partners
- China 14.3%
- European Union 8.9%
- United States 7.3%
- United Arab Emirates 6.3%
- Saudi Arabia 5.6%
- Other 57.5%[28]

Ease of Doing Business Index (World Bank of India)
- 63rd (easy, 2020)

Entity Set Up in India

- Brief of Entry Options in India
- Entity Structures in India
- Birds Eye View of the Entry Structures

Brief of Entry Options

It becomes essential for foreign companies to select the right entry vehicle in order to succeed in India. India offers a variety of entity structures and depending upon the need of the organization, the foreign investor can identify a suitable legal entity to set up and commence operations in India.

The following are the options available to foreign investors to set up a business in India:

01 Incorporation of a Company under the Companies Act 2013 – Wholly Owned Subsidiary or Joint Venture.

02 Make an investment in a Limited Liability Partnership under the Limited Liability Partnership Act, 2008.

03 Open a Liaison Office or a Representative Office, establish a Branch Office or a Project Office to undertake activities as permitted by the Foreign Exchange Management Regulations 2000.

Entities operating as a Foreign Company

Liaison Office

A Liaison Office can act as a channel of communication between the foreign headquarters and the Indian party and is restricted from carrying on any business activity in India.

Branch Office

A Branch Office can engage in export/import of goods, render consultancy etc. It cannot engage in retail trade or manufacturing activities in India.

Project Office

A Project Office is established to execute a particular project awarded to the foreign entity by an Indian Company.

Entities Operating as Indian Companies

Wholly Owned Subsidiary

A Wholly Owned Subsidiary is a 100 percent subsidiary of the foreign company. It is treated at par with a domestic company.

Joint Venture Company

A Joint Venture company is where two or more parties jointly hold share capital. Joint Control is determined as per shareholders agreement.

Limited Liability Partnership

A Limited Liability Partnership is a business form whereby the entity gets benefits of a limited liability company and partnership.

Entity Structures in India

While India's economy is largely agrarian it has a booming service sector including construction, infrastructure, healthcare, banking and insurance amongst many others. The service sector alone accounts for 55.60% of the total GDP.

Liaison Office

A Liaison office ('LO') also known as a representative office can be established in India to facilitate or promote the parent company's business in India. A LO acts as a communication channel between the foreign headquarters and Indian parties. A LO cannot engage in any revenue generating activities in India and therefore operating expenses of a LO are met by the Head Office from outside India through foreign inward remittances.

A foreign company prefers setting up a LO to create brand awareness of it's head office in India, promote business activities and explore market opportunities for it's head office in India. Thus, the role of a LO is limited to collecting information about the possible market opportunities, provide information about the foreign company and it's products to prospects in India.

A LO can undertake the following activities in India:

- Represent the foreign company/parent company in India
- Promote trade with India
- Identify and establish financial/technical collaborations between Indian company and parent company
- Facilitate communication channel between the parent company and Indian company

A LO can be set up in India with the prior approval of the Reserve Bank of India ('RBI'). Initially, permission to set up a LO is granted for a period of three years. This can subsequently be extended from time to time. Once the validity expires, a LO has to either close down or has to be converted to a WOS/JV in accordance with the Foreign Direct Investment ('FDI') policy.

The following additional requirements are to be satisfied for qualifying for establishment of a branch office:

- The company should be profitable in the home country for three preceding financial years;
- The minimum net worth of the company should be US$ 50,000 as per the latest audited balance sheet.

The Foreign Exchange Management Act ('FEMA') governs the application process and approval process for the establishment of a LO. Under the Act, foreign enterprises must receive specific approval from the RBI's foreign exchange department to operate a liaison office in the country.

The process of setting up a LO in India takes about 3 – 4 months. After the receipt of RBI approval activities it takes about 2 months. Thus, it takes approximately 6 months for a LO to be operational in India.

Branch Office

A Branch Office ('BO') is an extended arm of the foreign company and can conduct the same business activities as that of the parent company. The name of the Indian Branch shall be the same as the parent company. A BO is not permitted to engage in retail trading activities or carry out any direct or indirect manufacturing or processing activities in India on their own. However, a BO may sub contract these to an Indian manufacturer. Incase of a BO operating in a Special Economic Zone ('SEZ'), it is permitted to undertake manufacturing and service activities in sectors with 100 percent FDI approval.

All the operating expenses of a BO can be met from remittances received from the foreign head office or the activities carried out in India subject to approval of the RBI. Profits earned by the BO are freely repatriable subject to the payment of taxes.

A BO is eligible to undertake the following activities in India:

- Export/Import of Goods
- Render professional/consultancy services
- Undertake research work in connection with activities of the parent company
- Promote financial/technical collaborations between Indian company and parent company or group companies
- Represent parent company in India and act as a buying/selling agent in India
- Render service in information technology and software development in India
- Render technical support to the products supplied by parent/group companies
- Represent foreign airline/shipping company

In order to set up a BO in India, prior permission from the RBI is required. RBI shall consider the applications under the following routes:

- Reserve Bank Route:
  Where the parent company's business falls under the category where 100% FDI is permissible under the automatic route.
- Government Route:
  Where the parent company's business falls under sector where 100% FDI is not permissible.

The following additional requirements are to be satisfied for qualifying for establishment of a branch office:

- The company should be profitable in the home country for five preceding financial years;
- The minimum net worth of the company should be US$ 1,00,000 as per the latest audited balance sheet.

Project Office

When a foreign company has been awarded a contract to execute a project in India from an Indian company, a Project Office ('PO') can be established. A PO is valid till the conclusion of project.

In order to set up a project office, in addition to the project been awarded to the parent, company one of the following conditions are required to be satisfied:

- The project is funded by remittances from the parent company/overseas entity
- The project is funded by a multilateral or bilateral international agency
- The project has been cleared by the appropriate authority in India
- The Indian company awarding the contract has been granted a term loan from a public financial institution for the project.

In case the aforesaid conditions are not satisfied; RBI approval is to be obtained.

It takes approximately ten days to receive an approval for the project office. In case a PO is not opened within six months from the date of the approval letter, an extension of six months may be granted by the RBI.

A PO is permitted to carry on commercial activities in relation to the execution of the project. In this regard, a PO is permitted to open a non-interest-bearing foreign currency account. Permissible debits and credits to this account are payments and receipts from the project sanctioning authority, parent company, multilateral/bilateral international financing agency. The foreign currency account should be closed on the conclusion of the project.

Wholly Owned Subsidiary

A Wholly Owned Subsidiary ('WOS') operates as an independent legal entity whose 100 percent shareholding is held by the parent company. A WOS can be set up in those sectors where 100% FDI is allowed under the FDI policy.

Procedure to open a WOS:

- The promoters of a company shall obtain Digital Signatures ('DSC') and Director Identificatio Number ('DIN') of all Directors.
- As per the Companies Act 2013, every company is required to have one resident director in a company. The composition of the Board of Directors can be decided by the promoters of the company.
- There shall be minimum two subscribers to the Memorandum. Incase of a WOS, 99.99% shares are held by the foreign company and 0.01% shares shall be held by a person on behalf of the foreign company. A WOS can be incorporated with a minimum authorized capital of INR 100,000.
- The Memorandum of Association and Articles of Association shall be framed in accordance with the Companies Act 2013.
- The incorporation documents are to be filed with the Ministry of Corporate Affairs ('MCA'). The MCA has introduced the SPICe+ form for incorporation of a company. On submission of documents, the Registrar of Companies ('ROC') shall issue a Certificate of Incorporation and a Corporate Identification Number. It takes about four to five weeks to complete the process.

A WOS is treated at par with a domestic company. All rules and regulations applicable to an Indian company apply to a WOS.

Joint Venture

A Joint Venture ('JV') is a form of partnership or a business entity created by two or more parties, generally characterized by shared ownership, shared governance as well as shared risk and rewards. Two entities generally prefer a JV in order to generate competitive advantage or create a synergy. As a normal practice, JV's are generally formed with partners engaged in the same field of business.

This form of entity is gaining popularity with foreign investors who wish to set up and do business in India. A JV could be an ideal vehicle in those sectors where 100% FDI is not allowed. A JV company incorporated under the Companies Act 2013 has the same rules and regulations as those applicable to an Indian company. A JV may be formed with an already existing business entity in India.

The parties to the JV need to have the terms and conditions clearly defined in the JV agreement before signing the contract in order to ensure the successful operation of the JV company. The JV agreement should be drafted keeping in mind the provisions the Companies Act 2013, Indian Income Tax Act 1961, FEMA and other rules and regulations as applicable.

Some critical clauses which need to be included in a JV agreement include:

- Object and scope of the Joint Venture
- Equity participation by local and foreign investors
- Nature of relationship
- Financial arrangements
- Sharing of profits, risks and liabilities
- Control issue and decision making
- Dispute Resolution Mechanism
- Exit Strategy
- Confidentiality and Non-Compete clauses.

Limited Liability Partnership

A Limited Liability Partnership ('LLP') is an alternate vehicle of setting up a legal entity in India. A LLP combines the advantages of a company and the flexibility of a partnership firm. A LLP is governed by the provisions of the Limited Liability Partnership Act 2008.

Under this structure, the liability of a partner is limited to the agreed contribution and provided the flexibility without imposition of any additional liabilities. One partner is not responsible for the unauthorized actions of the other partners thus safeguarding the other partners from the joint liability created by the other partners. A LLP is easier to manage as compared to a Private Limited Company with less compliance requirements in comparison to a company.

Foreign investment in LLP's is permitted subject to the following conditions:

- Foreign Investment is permitted under the automatic route in LLPs operating in sectors/ activities where 100% FDI is allowed through automatic route and there are no FDI – linked performance conditions.

  An Indian company or a LLP, having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI - linked performance conditions.

- Conversion of an LLP having foreign investment and operating sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI – linked performance conditions, into a company permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI – linked performance conditions, into an LLP under automatic route.
- FDI in LLP's is subject to the compliance of conditions of the LLP Act 2008.

Birds Eye View of the Entry Structures

Options	AS AN INDIAN COMPANY		AS A FOREIGN COMPANY		
Particulars	**Wholly Owned Subsidiary (WOS)**	**Joint Venture (JV)**	**Branch Office (BO)**	**Liasion Office (LO)**	**Project Office (PO)**
Meaning	An independent legal entity whose 100 percent shareholding is held by the parent company. Set up in those sectors where 100% FDI is allowed under the FDI policy.	A form of partnership or a business entity created by two or more parties, characterized by shared ownership, governance and risk and rewards. Ideal vehicle for those sectors where 100% FDI is not allowed.	Serves as an extension of the parent company. Can conduct the same business activities as that of the parent company.	A representative office and acts as a channel of communication between the Foreign parent company (Head Office) and Indian companies.	Foreign investors planning to execute specific projects in India that are linked to one-off contract can set up a temporary project site office in India to handle the contract.
Permitted Activities	Any activities as stipulated in the "Object Clause" of the Memorandum of Association of the Indian Company subject to Indian laws and regulations.	Any activities as stipulated in the "Object Clause" of the Memorandum of Association of the Indian Company subject to Indian laws and regulations.	Export/Import of goods; Render services; Carry out research; Rendering technical support to the products supplied by parent company; Acting as a buying/selling agent in India.	Representing parent company in India; Promoting trade with India; Act as a communication channel; Promoting technical/ financial collaborations.	It is essentially a project office set up with the limited purpose for executing a specific project.
Legal Status	Distinct and legal entity, recognised by the law as a legal person with rights and liability.	Distinct and legal entity, recognised by the law as a legal person with rights and liability.	No separate legal standing of it's own	No separate legal standing of it's own	No separate legal standing of it's own
Compliance Cost	High	High	Low	Low	Low
Reporting of Global Accounts	No	No	Yes	Yes	Yes
Authorised Personnel	Compulsory to have an Indian Executive Director on board.	Compulsory to have an Indian Executive Director on board.	Managed by Authorised Representative, resident in India (Country Manager)	Managed by Authorised Representative, resident in India (Country Manager)	Managed by Authorised Representative, resident in India (Country Manager)
Time limit for set-up	Approx. 1 month	Approx. 1 month	3-4 months (RBI permission takes time)	3-4 months (RBI permission takes time)	There is general permission. 15 days to register PO
Validity	At will – till shut down it's operations	At will – till shut down it's operations	3 Years (Extension is possible)	3 Years (Extension is possible)	Validity- Tenure of project (Extension is possible for specific reason)
Steps involved in Registration	1. Obtain DIN for all Directors 2. Obtain DSC for all Directors 3. Application for Name Reservation 4. Draft MOA & AOA 5. Subscription to the memorandum by the Shareholders 6. Submission of all the documents to ROC 7. Receipt of Certificate of Incorporation 8. Apply for PAN, TAN, PT, GST, IEC and Bank Account 9. Submission of documents for FDI Compliance after subscription of Share Capital	1. Obtain DIN for all Directors 2. Obtain DSC for all Directors 3. Application for Name Reservation 4. Draft MOA & AOA 5. Subscription to the memorandum by the Shareholders 6. Submission of all the documents to ROC 7. Receipt of Certificate of Incorporation 8. Apply for PAN, TAN, PT, GST, IEC and Bank Account 9. Submission of documents for FDI Compliance after subscription of Share Capital	1. Apply for DSC of Authorised Signatory 2. Filing of application with RBI through Authorised Dealer Bank (Form FNC) 3. Verification of KYC from Banker of Parent Company 4. Approval of RBI for BO registration in India 5. Registration of Branch Office with ROC 6. Obtain registration under Shop and Establishment Act 7. PAN, TAN, PT and Bank Account opening 8. GST, IEC Registration	1. Apply for DSC of Authorised Signatory 2. Filing of application with RBI through Authorised Dealer Bank (Form FNC) 3. Verification of KYC from Banker of Parent Company 4. Approval of RBI for LO registration in India 5. Registration of Liason Office with ROC 6. Obtain registration under Shop and Establishment Act 7. PAN, TAN, PT and Bank Account opening 8. IEC Registration	1. Apply for DSC of Authorised Signatory 2. Filing of application with RBI through Authorised Dealer Bank (Form FNC) 3. Verification of KYC from Banker of Parent Company 4. Approval of RBI for PO registration in India 5. Registration of Project Office with ROC 6. Obtain registration under Shop and Establishment Act 7. PAN, TAN, PT and Bank Account opening 8. GST and IEC Registration
Normal Tax rate (this is subject to other limits)	25.168% (As per Finance Act,2021)	25.168% (As per Finance Act,2021)	Attibutable profit taxed at 40% (to be increase by surcharge and cess) on net basis	Since there is no income accrual, there is no income tax hence generally not taxable.	Attibutable profit taxed at 40% (to be increase by surcharge and cess) on net basis
Transfer Pricing Provisions	Applicable	Applicable	Applicable	Not Applicable	Applicable
Payments to Parent Company	By way of dividend; By way of Royalty/ Fees for Technical fees; By way of management fee; Remittances under Supply Contracts (subject to limitation of matters of 'Related Party transactions') Note: Related party transactions are subject to Transfer Pricing Regulations	By way of dividend; By way of Royalty/ Fees for Technical fees; By way of management fee; Remittances under Supply Contracts (subject to limitation of matters of 'Related Party transactions') Note: Related party transactions are subject to Transfer Pricing Regulations	Profits can be freely repatriated to Parent company subject to payment of applicable taxes in India	None, except upon closure of the liaison office	PO is permitted to remit outside India profit of the project net of applicable Indian taxes. Also AD Category – I bank can permit intermittent remittances.

Foreign Direct Investment in India

- Background
- Recent Changes in FDI policy
- FDI Routes and Sector Specific Conditions

Background

Foreign Direct Investment ('FDI') is a major non – debt financial resource for economic development. FDI inflows have grown consistently since liberalization and are an important component of foreign capital since FDI infuses long term sustainable capital in the economy and contributes towards technology transfer, development of strategic sectors, greater innovation, and competition and employment creation amongst other benefits.

Several regulatory relaxations have been undertaken by the Government to simplify FDI procedures and make India investor friendly. The Government of India has introduced a policy framework on FDI which is transparent, predictable and easily comprehensible.

Owing to these various initiatives, India is a part of top 100 club on Ease of Doing Business in (EODB). Total FDI inflows in the last 20 years (April 2000 – September 2020) are $729.8 bn while the total FDI inflows received in the last five years (April 2014 – September 2019) was $319 bn which amounts to nearly 50% of total FDI inflows in the last 20 years.

During FY 2020 – 2021, total FDI inflow of $58.37 bn, 22% higher as compared to the first 8 months of 2019 – 2020. FDI equity inflows received during April – November 2020 is $43.85 bn which is 37% more compared to April – November 2020 ($32.11 bn).

The Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI.

Recent Changes in the FDI Policy

India announced it's latest consolidated FDI policy on 15th October 2020 after a gap of three years. The previous FDI policy was announced in August 2017.

Key Highlights of the Policy

Investments in India from neighboring countries

The Revised Policy incorporates the restrictions in FDI coming from overseas entities belonging to neighboring countries that share a land border with India, including China, to prevent opportunistic takeovers. Therefore, incase an entity of any country which shares it's land border or where the beneficial owner of such investment into India is situated in or is a citizen of any such country – can invest in India with prior approval of the Government.

Government approval will also be required in the event of transfer of ownership of any existing or future FDI in an entity in India, which directly or indirectly results in beneficial ownership falling within the restriction/purview stated above.

Changes in Sectoral Caps

01 **Defense:** The FDI limit in defense manufacturing under the automatic route was enhanced to 74% from 49% and other sector specific conditions were imposed/ revised.

02 **Single Brand Retail Trading:** 100% FDI through automatic route was permitted in this sector. Certain sector specific conditions were imposed/relaxed.

03 **Digital Media:** The revised policy introduces a 26% cap on equity/FDI for entities engaged in uploading/streaming of news and current affairs through digital media platforms.

04 **E-Commerce:** Certain restrictions were imposed on e-commerce market place entities from

selling their products on the platform run by the said marketplace entity.

05 **Contract Manufacturing:** Contract manufacturing is now included within the definition of 'manufacturing' under the automatic route.

FDI Routes and Sector Specific Conditions

FDI is regulated by the Government through two routes – automatic route and government route.

Automatic Route: Under the automatic route, a foreign investor can invest in India without prior approval of the Reserve Bank of India or the Central Government.

Government Route: Under government route, a foreign investor can invest in India with the prior approval of the government and foreign investment received under this route shall be in accordance with conditions stipulated by the Government in it's approval.

Permitted Sectors	Automatic	Government
Air Transport Services (non-scheduled and other services under civil aviation sector)	100%	–
Airports (Greenfield & Brownfield)	100%	–
Autocomponents	100%	–
Automobiles	100%	–
Biotechnology (Greenfield)	100%	–
Broadcast Content Services (Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels)	100%	–
Broadcasting Carriage Services	100%	–
Capital Goods 100%	100%	–
Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	–
Chemicals	100%	–
Coal & Lignite	100%	–
Construction Development: Townships, Housing, Built-up Infrastructure	100%	–
Construction of Hospitals 100%	100%	–
Duty Free Shops 100%	100%	–
E-commerce activities 100%	100%	–
Electronic Systems 100%	100%	–
Food Processing 100%	100%	–
Gems & Jewellery (Manufacturing) 100%	100%	–
Healthcare (Greenfield) 100%	100%	–
IT and BPM 100%	100%	–
Leather 100%	100%	–
Medical Devices 100%	100%	–
Mining and Exploration of metal and non-metal ores 100%	100%	–
Other services under Civil Aviation sector (Maintenance and Repair organizations; flying training institutes; and technical training institutions.) 100%	100%	–
Other services under Civil Aviation sector (Ground Handling Services subject to sectoral regulations and security clearance) 100%	100%	–
Petroleum & Natural Gas 100%	100%	–
Pharmaceuticals (Greenfield) 100%	100%	–
Ports and Shipping 100%	100%	–
Railway Infrastructure 100%	100%	–
Renewable Energy 100%	100%	–
Roads & Highways 100%	100%	–
Single Brand Product Retail Trading 100%	100%	–
Textiles & Garments 100%	100%	–

Permitted Sectors	Automatic	Government
Thermal Power 100%	100%	-
Tourism & Hospitality 100%	100%	-
Biotechnology (Brownfield)	Upto 74%	Above 74%
Defence	Upto 74%	Above 74%
Healthcare (Brownfield)	Upto 74%	Above 74%
Pharmaceuticals (Brownfield)	Upto 74%	Above 74%
Petroleum Refining (by PSUs)	49%	-
Air Transport Services (Scheduled air transport services, regional air transport services)	Upto 49%	Above 49%
Telecom Services	Upto 49%	Above 49%
Digital Media	-	Upto 26%
Print Media (Publishing of newspaper, periodicals and Indian editions of foreign magazines dealing with news and current affairs)	-	26%
Broadcasting Content Services	-	49%
Multi Brand Retail Trading	-	51%
Food Products Retail Trading	-	100%
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	-	100%
Print Media (Publication/ printing of scientific and technical magazines/specialty journals/ periodicals and facsimile edition of foreign newspapers)	-	100%

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Prohibited Sectors

- Lottery Business including Government/private lottery, online lotteries, etc.*
- Gambling and Betting including casinos*
- Chit Funds
- Nidhi Company
- Trading in Transferable Development Rights (TDR)
- Real Estate Business or Construction of farm houses**
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Sectors not open to private sector investment-atomic energy, railway operations (other than permitted activities mentioned under the Consolidated FDI policy)

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Taxation in India

- Corporate Taxation
- Personal Taxation
- Goods and Service Tax
- International Taxation and Transfer Pricing

Corporate Taxation

All domestic companies in India are liable to pay taxes on their global income (i.e income earned in India as well as income earned overseas). Foreign companies are liable to pay taxes only on income earned and accrued in India.

With a view to encourage investment in India and make India attractive to foreign investors, the government significantly reduced tax rates.

Section 115BAA and section 115BAB were introduced vide Taxation and Amendment Laws (2019) under which companies can avail the benefits of the reduced tax rates subject to the satisfaction of certain conditions.

Detailed provisions of these sections explained here below:

Section 115BAA

In order to avail benefits under s. 115BAA of the Income Tax Act 1961, certain conditions prescribed therein will have to be satisfied.

01 The company cannot avail benefits of any exemption / incentives under the various provisions of the Income Tax Act. Thus, the total income of the company should be computed without :

I. Deduction under section 10AA for units in Special Economic Zone

ii. Deduction for additional depreciation under section 32 and investment allowance under section 32AD towards new plant and machinery made in notified backward areas in the states of Andhra Pradesh, Bihar, Telangana, and West Bengal.

iii. Deduction under section 33AB for tea, coffee and rubber manufacturing companies

iv. Deduction towards deposits made towards site restoration fund under section 33ABA by companies engaged in extraction or production of petroleum or natural gas or both in India

v. Deduction for expenditure made for scientific research under section 35

vi. Deduction for the capital expenditure incurred by any specified business under section 35AD

vii. Deduction for the expenditure incurred on an agriculture extension project under section 35CCC or on skill development project under section 35CCD

viii. Deduction under Chapter VI-A in respect to certain incomes, which are allowed under section 80IA, 80IAB, 80IAC, 80IB and so on, except deduction under section 80JJAA

ix. Set-off of any loss carried forward from earlier years if such losses were incurred in respect of the aforementioned deductions

x. Deduction for depreciation under section 32, except the additional depreciation as mentioned above

02 Such a domestic companies shall not be liable to pay MAT under s. 115JB of the Income Tax Act 1961.

03 The domestic company shall not be eligible to claim set off of any brought forward depreciation (additional depreciation) for the assessment year in which the option has been exercised.

Section 115BAA

In order to avail benefits under s. 115BAB of the Income Tax Act 1961, certain conditions prescribed therein will have to be satisfied. These are listed here below :

01 The company has been set up and registered on or after **1 October 2019 and has commenced manufacturing on or before 31 March 2023**. Such a company should:

- I. Not be formed by the splitting up and reconstruction of a business already in existence except in case of a business re-established under section 33B
- ii. Does not use any plant or machinery previously used for any purpose. However, the company can use plant and machinery used outside India and used in India for the first time. Also, the company can use old plant and machinery, the value of which does not exceed 20% of the total value of the plant and machinery used by the company.
- iii. Does not use a building previously used as a hotel or a convention centre. 'Hotel' means a hotel of two-star, three-star or four-star category as classified by the Central Government. 'Convention centre' means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed.

02 The company should be engaged in the business of manufacture or production of any article or thing, and research in relation to such article or thing. The company can also be engaged in the distribution of such article or thing manufactured or produced by it.

03 The company cannot avail benefits of any exemption / incentives under the various provisions of the Income Tax Act. Thus, the total income of the company should be computed without :

- I. Deduction under section 10AA for units in Special Economic Zone
- ii. Deduction for additional depreciation under section 32 and investment allowance under section 32AD towards new plant and machinery made in notified backward areas in the states of Andhra Pradesh, Bihar, Telangana, and West Bengal.
- iii. Deduction under section 33AB for tea, coffee and rubber manufacturing companies
- iv. Deduction towards deposits made towards site restoration fund under section 33ABA by companies engaged in extraction or production of petroleum or natural gas or both in India
- v. Deduction for expenditure made for scientific research under section 35
- vi. Deduction for the capital expenditure incurred by any specified business under section 35AD
- vii. Deduction for the expenditure incurred on an agriculture extension project under section 35CCC or on skill development project under section 35CCD
- viii. Deduction under Chapter VI-A in respect to certain incomes, which are allowed under section 80IA, 80IAB, 80IAC, 80IB and so on, except deduction under section 80JJAA
- ix. Set-off of any loss carried forward from earlier years if such losses were incurred in respect of the aforementioned deductions
- x. Deduction for depreciation under section 32, except the additional depreciation as mentioned above

04 Such a domestic companies shall not be liable to pay MAT under s. 115JB of the Income Tax Act 1961.

The above concessional rate under s. 115BAA and s. 115BAB shall be available at the option of the taxpayer company. Such option is to be exercised before the due date of filing of return of income. Such an option once exercised, cannot be withdrawn by the taxpayer in any subsequent year.

The corporate tax rates applicable for FY 2021 – 2022 are as under:

Particulars	Income upto INR 10 million	Income between INR 10 million upto INR 100 million	Income in excess of INR 10 million
Domestic Company – turnover does not exceed INR 4,000 million in FY 2019 – 2020	26.00% (25% basic + 4% HEC)	27.82% (25% basic + 7% surcharge + 4% HEC)	29.12% (25% basic + 12% surcharge + 4% HEC)
Domestic Company – turnover exceeds INR 4,000 million in FY 2019 – 2020	31.20% (30% basic + 4% HEC)	33.384% (30% basic + 7% surcharge + 4% HEC)	34.944% (30% basic + 12% surcharge + 4% HEC)
Domestic Company – opting for concessional tax regime*	25.168% (22% basic + 10% surcharge + 4% HEC)	25.168% (22% basic + 10% surcharge + 4% HEC)	25.168% (22% basic + 10% surcharge + 4% HEC)
New Domestic Manufacturing Companies**	17.16% (15% basic + 10% surcharge + 4% HEC)	17.16% (15% basic + 10% surcharge + 4% HEC)	17.16% (15% basic + 10% surcharge + 4% HEC)
Foreign Companies	41.60% (40% basic + 4% HEC)	42.432% (40% basic + 2% + surcharge + 4% HEC)	43.68% (40% basic + 5% + surcharge + 4% HEC)

*Companies opting for beneficial tax regime under section 115BAA

** Companies opting for beneficial tax regime under section 115BAB

Note : HEC stands for Health and Education Cess

Minimum Alternate Tax

The Income Tax Act 1961 provides for payment of taxes under Minimum Alternate Tax ('MAT') on adjusted book profits at 15% if tax is calculated at less than 15% of adjusted book profits. Credit for MAT can be carried forward and claimed against standard corporate tax payments arising in future for a period of 15 years.

MAT provisions shall not be applicable to domestic companies opting for beneficial tax regime under section 115BAA and section 115BAB. Since the provisions of MAT are not available for companies opting for the beneficial tax regime, these companies cannot avail the benefit of the carry forward MAT credit.

MAT provisions are applicable to foreign companies only when it is a resident of a country with whom India has a DTAA and carried on business through a PE situated in India.

However, MAT provisions shall not apply to those foreign companies where their total income is solely derived from shipping business, exploration of mineral oils, business of aircraft, civil construction in turnkey projects and income thereon is offered to tax as per specific provisions provided under the Income – Tax Act.

A foreign company is not liable to MAT if it derives income from the following sources:

- Capital Gains from securities
- Interest
- Royalty
- Fees for technical services (FTS)

The Finance Act 2021 has also provided that no MAT on dividend of a foreign company.

Personal Taxation

Residential Status of an Individual

PART A :
Basic Conditions to test as to when an Individual is resident in India

Under section 6(1) an individual is said to be resident in India in any previous year, if he satisfies at least one of the following basic conditions –

Basic Condition (a) He is in India in the previous year for a period of 182 days or more
Basic Condition (b) He is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year

Basic Condition (b), the period of 60 days is extended to 182 days in the following cases:

- An Indian citizen who leaves India in any year for the purpose of employment
- An Indian citizen who leaves India as a member of the crew on an Indian ship
- An Indian citizen or a person of Indian origin, who has settled abroad, visits India.

The Finance Act 2020, has now amended the residency rules and reduced the number of days from 182 days to 120 days for Indian citizen or a person of Indian origin who has settled abroad and where total income, excluding foreign sources income, exceeds INR 15,00,000. Also, the new concept of deemed residency has been introduced whereby an Indian citizen who is not liable to tax in any other country by reason of domicile, residence etc. would be deemed to be a resident of India, and thus their Indian income would be taxable in India.

PART B:
Additional Conditions to test when a resident Individual is Ordinarily Resident in India

Under section 6(6), a resident individual is treated as "resident and ordinarily resident" in India if he satisfies the following two additional conditions –

Additional Condition (I) He has been resident in India in atleast 2 out of 10 previous years immediately preceding the relevant previous year
Additional Condition (ii) He has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year

If an individual does not satisfy conditions (a) & (b) as mentioned in PART A, he qualifies as a **Non – Resident in India (NR)**

An Individual who satisfies **atleast one of the basic conditions mentioned in PART A** but does **not satisfy the additional two conditions mentioned in PART B** is treated as a **resident but not ordinarily resident in India. (RNOR)**

The definition of RNOR has been extended by Finance Act 2020 to include:

- Person of Indian origin or citizen of India having total income, other than income from foreign sources exceeding INR 15,00,000 and who has been in India for a period exceeding 120 days but less than 182 days.
- A citizen of India who is not liable to tax in any other country by reason of domicile, residence or others.

Relation between residential status and Incidence of Tax

In order to understand the relationship between residential status and tax liability, one must understand the meaning of "Indian Income" and "Foreign Income"

Indian Income : Any of the following three is an Indian Income –

01 If income is received (or deemed or to be received) in India during the previous yar and at the same time it accrues (or arises or deemed to be received) in India during the previous year ;

02 If income is received (or deemed to be received) in India during the previous year but it accrues (or arises) outside India during the previous year ;

03 If income is received outside India during the previous year but it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

Foreign Income : If the following two conditions are satisfies, then such income is "foreign income"

a. Income is not received (or not deemed to be received) in India ; and

b. Income does not accrue or arise (or does not deem to accrue or arise) in India.

Incidence of tax for different taxpayers:
Tax incidence of different taxpayers is as following –

	Resident and Ordinarily Resident in India (ROR)	Resident but not Ordinarily Resident in India (RNOR)	Non Resident (NR)
Indian Income	Taxable in India	Taxable in India	Taxable in India
Foreign Income	Taxable in India	Only two types of foreign income (i.e Case 1 and Case 2 given below) are taxable in India Any other foreign Income is not taxable in India. Case 1 : Business Income and Business is controlled wholly or partly from India ; Case 2 : Income from Business or Profession which is set up India	Not Taxable in India

Individual Income Tax

The Finance Act 2020 introduced an alternative tax regime for individuals. Taxpayers have the option to choose between the old tax regime or new regime to file their taxes.

Under the new tax regime, individual taxpayers will not be eligible to get exemptions such as standard deduction, leave travel concession, house rent allowance (HRA), tax exemptions, donations to charitable institutions etc.

If the taxpayer opts for the old tax regime, exemptions and deductions such as standard deduction, leave travel concession, HRA, contribution to public provident fund, insurance premium paid etc. can be claimed.

Tax Slab under the Old Tax Regime

Tax Slab	Individuals < 60 years of age	Individuals > 60 years < 80 years of age	Individuals > 80 years
Upto INR 2,50,000	NIL	NIL	NIL
INR 2,50,000 - INR 3,00,000	5%	NIL	NIL
INR 3,00,000 - INR 5,00,000	5%	5%	NIL
INR 5,00,000 – INR 10,00,000	20%	20%	20%
Above INR 10,00,000	30%	30%	30%

Tax Slabs Under the New Tax Regime

Tax Slab	Tax Rate
Upto INR 2,50,000	NIL
INR 2,50,000 - INR 5,00,000	5%
INR 5,00,000 – INR 7,50,000	10%
INR 7,50,000 – INR 10,00,000	15%
INR 10,00,000 – INR 12,50,000	20%
INR 12,50,000 – INR 15,00,000	25%
Above INR 15,00,000	30%

The above tax rates are subject to surcharge & Health and Education Cess (HEC)

Surcharge :

a. 10% of income tax where income exceeds INR 50,00,000.

b. 15% of income tax where income exceed INR 1,00,00,000.

c. 25% of income tax where income exceeds INR 2,00,00,000.

d. 37% of income tax where income exceeds INR 5,00,00,000.

HEC : 4% of income tax & surcharge.

Goods and Service Tax

Goods and Service Tax (GST) was a historic tax reform which was introduced in India effective July 2017. Multiple taxes/duties like VAT, CST, Service Tax, Luxury Tax, Entry Tax etc. were subsumed into GST. Certain levies which were applicable to inter-state transportation of goods were also done away with in the new regime. GST is levied on all transactions such as sale, purchase, transfer, import of goods and services etc.

Components of GST

CGST : Collected by the Central Government on an intra – state sale;
SGST : Collected by the State Government on an intra – state sale;
IGST : Collected by the Central Government on an inter – state sale.

Transaction	Tax Applicable
Intra – State Transactions	CGST + SGST
Inter – State Transactions	IGST

Tax on Supply

GST is a tax on supply i.e supply is the taxable event for charging tax. The liability to pay GST arises at the time of supply of goods and services.

Under the GST regime, sale, transfer, exchange, barter, rental, lease and disposal constitutes supply.

Place of Supply

GST is a consumption based tax, therefore, taxes are paid in the state in which goods and services are consumed. The state where the goods and services are consumed will have the right to collect the tax.

Input Tax Credit

Input Tax Credit ('ITC') is the credit of GST which is paid on goods and services which are used for the furtherance of business.

Under the GST regime, ITC can be availed by every registered taxable person on all inputs used or intended to be used in the course of furtherance of business – be it goods or services. Also, ITC is available on capital goods used in the course of business, barring a few exceptions.

The end consumer bears the GST charged by the last supplier in the supply chain.

Cross utilization of ITC is not permitted. Credit of CGST on inputs can be utilized to pay CGST while credit of SGST on inputs can be utilized to pay SGST.

Composition Scheme

The GST scheme is ideal for small and medium businesses in India. A manufacturer or trader having a turnover of less than INR 15 million and a service provider having turnover less than INR 5 million can avail the benefit under the GST composition scheme.

Threshold Limit

The threshold limit for GST registration is INR 2 million for services and INR 4 million for supply of goods. A business whose aggregate turnover for a financial year exceeds INR 2 million is to mandatorily register under GST.

Zero Rated Supply

Zero rated supply means export of goods and/or services or supply of goods and/or services to a SEZ developer or a SEZ unit.

GST Rates

The GST Council has identified 1300 goods and 500 services and categorized these into four tax slabs – NIL, 5%, 12%, 18% and 28%. Gold and semi – precious stones are charged at a special rate under GST.

Exemptions

Supplies of goods or services which are taxable at NIL rate are exempt supplies. Certain supplies due to their nature are exempt from GST.

E-Way Bill

An e-way bill or electronic way bill is a document which has been introduced under the GST regime that needs to be generated before transporting or shipping of goods worth INR 50,000 or more.

International Taxation and Transfer Pricing

Tax Treaties

Double Taxation Avoidance Agreements

A double taxation avoidance agreement (DTAA) is a treaty between two or more countries to avoid taxing of the same income twice. A DTAA becomes applicable when a taxpayer is a resident of one country but earns income in another country.

The intent behind a DTAA is to make a country appear as an attractive investment destination by providing relief on dual taxation.

Foreign companies or non – resident companies operating in India are subject to withholding tax on their income – royalty, fees for technical services, interest, dividend as per the provisions of the Income Tax Act 1961.

However, foreign companies which are resident in the countries that India has a DTAA with can claim the benefit of the DTAA or Income Tax Act whichever is more beneficial.

DTAA override the provisions of the Indian Income Tax Act provisions to the extent they are more beneficial to the taxpayer (concessional tax rates applicable under certain double taxation avoidance conventions that India has signed with many countries). Relief is granted in respect of income chargeable to tax, both in India and the domestic tax laws of the other country in order to promote mutual economic relations, trade and investments.

India has signed DTAA's with majority countries. As per these treaties, income can be taxable in either of the contracting state depending upon the understanding of the nations and the conditions for availing the exemption from tax.

Below is the list of countries with which India has DTAA's

Albania	Israel	Qatar
Armenia	Italy	Romania
Australia	Japan	Russian Federation
Austria	Jordan	Saudi Arabia
Bangladesh	Kazakhstan	Serbia
Belarus	Kenya	Singapore
Belgium	Korea	Slovak Republic
Bhutan	Kuwait	Slovenia
Botswana	Kyrgyzstan	South Africa
Brazil	Latvia	Spain
Bulgaria	Libya	Sri Lanka
Canada	Lithuania	Sudan
China, People's Republic of	Luxembourg	Sweden
Colombia	Macedonia	Switzerland
Croatia	Malaysia	Syria
Cyprus	Malta	Tajikistan
Czech Republic	Mauritius	Tanzania
Denmark	Mexico	Thailand
Egypt	Mongolia	Trinidad and Tobago
Estonia	Montenegro	Turkey
Ethiopia	Morocco	Turkmenistan
Fiji	Mozambique	Uganda
Finland	Myanmar	Ukraine
France	Namibia	United Arab Emirates
Georgia	Nepal	United Kingdom
Germany	Netherlands	United States
Greece	New Zealand	Uruguay
Hong Kong	Norway	Uzbekistan
Hungary	Oman	Vietnam
Iceland	Philippines	Zambia
Indonesia	Poland	
Ireland	Portugal	

Tax Information Exchange Agreements (TIEAs)

Major economies have signed TIEAs with tax havens in the wake of 2008 financial crises. India has signed TIEAs with 19 different countries for the purpose of effective exchange of information relating to tax matters.

Argentina	Gibraltar	Macau, China
Bahamas	Guernsey	Maldives
Bahrain	Isle of Man	Saint Kitts and Nevis
Bermuda	Jersey	Seychelles
Belize	Liberia	San Marino
Cayman Islands	Liechtenstein	

Transfer Pricing

Transfer Pricing refers to rules and methods to compute pricing of transactions between enterprises under a common control or ownership. As per the provisions of the Income Tax Act 1961, income arising from transactions between unrelated parties is to be computed using the arm's length principle in such a manner as if the trading companies were unrelated or uncontrolled.

The provisions of transfer pricing are applicable on international transactions between specified domestic transactions and international transactions between Associated Enterprises (AE).

International transactions refer to transactions between two or more AEs involving one or more of the following activities:

- Purchase, sale or lease of tangible or intangible property;
- Provision of services;
- Lending or borrowing of money;
- Any other transaction having a bearing on the profits, income, losses or assets of such enterprise.

Arm's Length Price

Section 92 of the Income Tax Act 1961 deals with the computation of income from international transactions lays down that any income arising from an international transaction shall be computed in regards Arm's Length Price. Arm's Length Price is the price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in an uncontrolled transaction.

Methods to determine Arms Length Price (ALP)

The Income Tax Act 1961 prescribes the following methods to determine the Arm's Length Price between two associated enterprises:

- Comparable Uncontrolled Price (CUP) methods;
- Resale Price Method (RPM);
- Cost Plus Method (CPM);
- Profit Split Method (PSM);
- Transactional Net Margin Method (TNMM)
- Such Other Methods as may be prescribed.

Transfer Pricing Disclosures

A taxpayer is required to file a Chartered Accountants Report in Form 3CEB certifying the arm's length nature of international transaction and specified domestic transaction with Associated Enterprises is required to be prepared by the taxpayer & submitted to the revenue authorities by 31st October after the end of the financial year.

The Transfer Pricing Study Report that supports the Chartered Accountants Report is to be submitted before revenue authorities at the time of a detailed audit by revenue authorities.

Penalties

The following penalties have been prescribed for default in compliance with the provisions of the transfer pricing code:

Default	Nature of penalty
Failure to maintain documents; Failure to report a transaction in the account's report; or Maintaining or furnishing incorrect information or documents	2% of the value of transaction
Failure to furnish documents	2% of the value of transaction
Failure to furnish Form 3CEB by the due date	INR 100,000
In case of a transfer pricing adjustment, where – ·There is under- reporting of income; ·Under – reporting of income is in consequence of any misreporting.	50% of tax on the adjusted amount 200% of tax on the adjusted amount

Indian rules on Master File and Country-by-Country Reporting Requirements

In brief

The Indian Central Board of Direct Taxes (CBDT) has prescribed the rules for maintaining and furnishing the Master File (MF) and Country-by-Country (CbC) report.

BEPS Action Plan 13 – Transfer pricing documentation and Country-by-Country Reporting

The G20 / OECD have agreed on very significant changes to the compliance and reporting of global information for risk assessment and transfer pricing purposes. The OECD Report on BEPS Action Plan 13 provides for revised standards for transfer pricing documentation and a template for CbC reporting of income, earnings, taxes paid and certain measure of economic activity. BEPS Action Plan 13 consist of three tiered transfer pricing documentation such as:

A three-tiered structure has been mandated consisting of:

- a Master File containing standardized information relevant for all MNE group members;
- a Local File referring specifically to material transactions of the local taxpayer; and
- a CbC report containing certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group.

Criteria for applicability of CbC report and Master File

Threshold for Master File

The MF will be applicable to every constituent entity (CE) of an international group (whether inbound [having a parent entity resident in a jurisdiction other than India] or outbound [having a parent entity resident in India]), subject to the following two conditions:

	Criteria	Evaluation Period	Threshold exceeding*
Master File	1. Consolidated revenue of the international group	Accounting Year	INR 5 billion (i.e. approx. USD 78.74 million)
		AND	
	2. Value of international transactions of the constituent entity	Accounting Year under consideration	INR 500 million (i.e. approx. USD 7.87 million)
		OR	
	Value of international Transactions involving intangibles of the constituent entity	Accounting Year under consideration	INR 100 million (i.e. approx. USD 1.57 million)
Country by country Reporting ('CbCR')	Total consolidated group revenue of the international group	Immediately preceding previous year of the Reporting Accounting Year	INR 64,000 million (i.e. approx. USD 914.28 million)

Penalties

The following penalties have been prescribed for default in compliance with the furnishing of CbCR and Master File:

S. No.	Nature of default	Penalty
1	Non- furnishing of CbCR and the failure continues for a period of one month	INR 5,000 per day of default
2	Non- furnishing of CbCR and failure continues beyond a period of one month	INR 15,000 per day of default
3	Non-furnishing of CbCR even after levy of penalty based on 1 or 2 above (i.e. for delay beyond the date of service of penalty order based on 1 or 2 above)	INR 50,000 per day of default
4	Non submission of information / document called for in relation to CbCR	INR 5,000 per day of default
5	Non submission of information / document called for in relation to CbCR even after levy of penalty based on 4 above (i.e., for delay beyond the date of service of penalty order based on 4 above)	INR 50,000 per day of default
6	Furnishing of inaccurate information /document in the CbCR or in relation to CbCR	INR 5,00,000
7	Failure to furnish the Master File	INR 5,00,000

Audit and Assurance in India

- Audit under the Companies Act 2013
- Audit under the Insurance Act 2013
- Goods and Service Tax Audit

Audits under the Companies Act 2013

As per the regulatory framework instituted by the Companies Act 2013, a company in India is required to appoint an auditor to under take an audit of a company.

Audits in India prescribed under India's company law can be classified as under:

01 Statutory Audit

02 Internal Audit

Statutory Audit

A statutory audit is undertaken to verify the accuracy of the financial position of company and involves evaluation of the books of accounts of the company, bank statements, accounting records and such other relevant documentation.

As per law, the following persons are eligible to conduct a statutory audit:

- Independent Chartered Accountant
- Chartered Accountant Firm
- Limited Liability Partnership Firm (LLP) with major partners practicing in India and qualified for appointment as an auditor of the company.

As per the governing law, all public companies and private limited company have to mandatorily undergo statutory audits irrespective of the nature of their business or turnover.

Shareholders of a company must at every Annual General Meeting (AGM) appoint a statutory auditor. A statutory auditor holds position from one AGM until the conclusion of the next AGM.

Internal Audit

An internal audit is an independent management function. Under an internal audit the current processes or existing controls of an organization are evaluated to ensure complete accuracy. Better internal controls ensure better corporate governance.

The role of internal auditor is to review operations, policies and procedures and to establish better policies and procedures. This function is essentially useful in identifying any frauds in the organization and eliminating them.

A chartered accountant or a cost accountant is eligible to conduct an internal audit.

Classes of Companies mandated to undertake an Internal Audit

Listed Company	Mandatory
Unlisted Public Company	1. Paid up share capital exceeds INR 500 million in the previous financial year.
	2. Turnover exceeds INR 2 billion in previous financial year.
	3. Outstanding loans and liabilities exceed INR 1 billion at anytime during the previous financial year.
	4. Outstanding deposits exceeding INR 250 million in the previous financial year
Private Limited Company	1. Turnover exceeding INR 2 billion in the previous financial year.
	2. Outstanding Loans & Liabilities exceeding INR 1 billion at anytime during the previous financial year.

Audits under the Income Tax Act 1961

Tax Audit

Section 44AB of the Income Tax Act 1961 prescribes the threshold limits for conducting a tax audit under the Income Tax Act 1961. A tax audit is an examination of the review of business or profession from the income tax point of view.

The tax audit report discloses information such as depreciation, compliances under the various provisions of the Income Tax Act 1961, claim for deductions etc. to ensure accurateness of the return of income filed.

Threshold Limits

Category of Person	Threshold Limited
Taxpayer carries on Business	Total turnover, gross receipts exceed INR 10 million in the financial year
Taxpayer carries on business under presumptive taxation under s. 44AE, 44BB and 44BBB of Income Tax Act 1961	Profits declared lower than those prescribed under presumptive tax scheme.
Taxpayer carries on business under presumptive taxation under s. 44AD of Income Tax Act 1961	Taxable income lower than those prescribed under presumptive tax scheme and income exceeds the basic threshold limit
Taxpayer carrying on profession	Total gross receipts exceed INR 5 million in the financial year.

The Finance Act 2021 has exempted taxpayers having turnover exceeding INR 100 million to undergo a tax audit subject that cash receipts do not exceed 5% of the gross receipts of turnover and cash payments are limited to 5% of the aggregate payments. This amendment is effective from FY 2021 – 2022.

Tax Audit Report

The tax auditor shall furnish the tax audit report in the following format :

- Form 3CA: When the taxpayer is required to get books audited under any other law;
- Form 3CB: When taxpayer is not required to get books audited under any law but in line with section 44AB of the Income tax Act 1961

Along with either of the forms mentioned above, the detailed disclosures by the tax auditor are furnished in the prescribed format in Form 3CD.

Penalties

Non – filing of tax audit by a taxpayer who is mandated to get the tax audit done shall be liable to pay penalty at :

- 0.5% of the total sales, turnover or gross receipts;
- INR 1,50,000

Goods and Service Tax Audit

A GST audit is required to be undertaken by those taxpayers whose aggregate annual turnover exceeds INR 20 million. The primary objective of the audit is to verify the correctness of the turnover declared, taxes paid, refund claimed and input tax credit availed. The intent of this examination is to ensure compliance with the various GST laws and regulations.

Types of GST Audit

Type of Audit	Conducted by and applicability
Turnover based audit	Chartered Accountant of Cost Accountant appointed by taxpayer.
	(Mandatory when turnover exceeds INR 20 million.)
Normal Audit	Commissioner of CGST or SGST
	(On an order by the Commissioner.)
Special Audit	Conducted by a Chartered Accountant or Cost Accountant.
	(On an order by Dy. Commissioner or Assistant Commissioner)

Turnover-based Audit

If the annual turnover of a registered taxpayer is more than INR 2 crores in a financial year , he is required to get his accounts audited by a Chartered Accountant or Cost Accountant every year.
A financial year covers the 12-month period beginning from April of a calendar year to March of the next calendar year.

Aggregate turnover is calculated as under:

Aggregate Turnover = value of all taxable (inter-state and intra-state) supplies + exempt supplies+ export supplies of all goods and services.

The total turnover calculation must be PAN-based, which means that once the turnover under the PAN is more than INR 2 crores all business entities registered under GST for that PAN will be liable for GST audit for a financial year.

Compliances for GST Audit:

Qualification of GST Auditor & Eligibility:

Only a Chartered Accountant or a Cost Accountant can perform a GST Audit.

Relevant Points:

01 An internal auditor cannot be appointed as a GST auditor.

02 The GST Act does not allow a GST practitioner to perform the audit. The power to audit is granted only to a Chartered Accountant or Cost Accountant who is in practice or is an employee of a firm of Chartered Accountants or Cost Accountants. Therefore, a Chartered Accountant must not be registered as a GST practitioner for the purpose of issuing the Audit Report.

03 Where an organization or an entity has multiple branches registered under GST in different states/UTs, the total aggregate turnover of all such branches is considered while calculating the threshold limit of INR 2 crores. So, if the cumulative turnover of all the branches exceeds INR 2 crores, then the GST audit is applicable to each of these branches, irrespective of whether the turnover of a particular branch is less than the threshold. In such cases, one can appoint either one dedicated auditor for all branches or separate auditor for each branch. Where multiple branches have different auditors, the Standards on Auditing: SA 299 — Responsibility of the Joint Auditors may apply for the purpose of reporting GST Audit observations & Reporting.

Conducting GST Audit & Issue of GST Audit report

Appointment of GST Auditor:

A proprietor, partner or Board of Directors in case of a Company should appoint a GST Auditor at the beginning of the financial year.

Forms for Annual return and GST Audit:

Type of Taxpayer	Form to be Filed
Regular Taxpayer filing GSTR 1 and GSTR 3B	GSTR-9
Taxpayer under composition Scheme	GSTR-9A
E-Commerce Operator	GSTR-9B

Applicable for GST Audit	
Taxpayers whose turnover exceeds INR 2 Crores in FY	GSTR-9C

Review of comments by GST Auditor:

The Auditor must report any tax liability pending for payment by the taxpayer, identified through the reconciliation exercise and observations made on GST audit. Taxpayers can settle taxes as recommended by the auditor in Form DRC-03.

Submission of GST Audit report & Annual return:

The finalized GSTR-9C can be certified by the same Chartered Accountant who conducted the GST audit or it can also be certified by any other Chartered Accountant who did not conduct the GST Audit for that particular GSTIN. The following must be reported and certified by the GST Auditor or the certifier:

- Whether or not all the requisite accounts or records are maintained.
- Whether or not the Financial Statements are prepared as per the books of accounts maintained at the principal place of business or additional place of business of the taxpayer.
- Certify the accuracy of information in GSTR-9C.
- To list down the audit observations or reservations or comments, if any.

Penalty for not submitting GST Audit report:

Sec 47(2) provides that in case of failure to submit the GST annual Return within the specified time, a late fee shall be leviable at INR.100/day during which such failure continues subject to a maximum of 0.25% of the turnover in the State/UT.

There is no specific penalty prescribed in the GST law for not getting the accounts audited by a Chartered Accountant /Cost Accountant Therefore, general penalty of upto Rs.25,000/- shall be leviable.

Labor Laws in India

- Existing Labor Laws
- New Labor Codes

Existing Labor Laws

In India, labor forms the subject matter of the concurrent list and therefore both Central and State Governments are competent to enact legislations. Labor laws in India derive their origin, strength and authority from the provisions of the Constitution of India. Labor Law reforms are an ongoing and continuous process and the Government is introducing new laws and amending the existing ones in response to the emerging needs of the workers in a constantly dynamic environment.

Entrepreneurs in India are required to be aware of employment laws the applicability, employer responsibilities under these laws and penalties in case of non – adherence.

Law of Wages

Minimum Wages Act, 1948

The Minimum Wages Act 1948 provides for minimum wages in certain employments.

Payment of Bonus Act, 1965

The Payment of Bonus Act 1965 applies for the payment of bonus to certain persons employed in certain establishments in India and is applicable to every establishment in which 20 or more persons are employed and to all employees drawing remuneration of INR 10,000 or less.

Payment of Wages Act, 1936

The Payment of Wages Act 1936 is enacted to ensure that wages to workers are not withheld by the employers and paid within stipulated periods without any unauthorized deductions.

Particulars	The Payment of Wages Act, 1936	The Minimum Wage Act 1948	The Payment of Bonus Act 1965
Objectives	To regulate payment of wages and to prohibit malpractices and exploitation of labourers.	To fix minimum wages.	To regulate amount of bonus paid to the employee and to fix minimum and maximum bonus payable.
Scope & Applicability	- Applicable to persons employed in a factory, industrial or other establishment or in a railway, whether directly or indirectly through a sub contractor - Applicable to an employed person whose wages do not exceed rupees twenty four thousand per month.	- Applicable to every employer who employs more than one thousand employees in the State; - Applicable to skilled as well as unskilled labour; - Applicable to employee on probation as well.	- Applicable to every factory and establishment in which twenty or more persons are employed. - An establishment to which the Act applies, shall continue to be governed by the Act notwithstanding that the number of persons employed therein falls below twenty.
Other Relevant Provisions	- Payment of wages by employer before expiry of 7th day after last day of wage period where number of workers are less than ten thousand and upto 10th day where employees are more than one thousand. - Payment in currency notes and coins. Payment in cheque with written consent of employee. - Deductions allowed under the Act should not be more than 75% of wages where any amount of deduction is meant for payment to co-operative societies, otherwise not more than 50%.	- The appropriate government shall fix the minimum rates of wages payable to employees employed in scheduled employment; - It may review at such intervals no exceeding five years the minimum rates of wages fixed under the Act. - The Act provides for regulation of working hours, overtime, weekly holidays and overtime wages. Period and payment of wages and deduction from wages.	- Eligibility: (a) Salary/wages upto INR 21,000 per month, (b) engaged in any work whether skilled, unskilled, managerial, supervisory etc. (c) worked not less than 30 days in the same year. - Employer shall be bound to pay 8.33% of the salary/earned by the employee or INR 100 (or Rs. 60 when the employee is below 15 years of age) whichever is higher. - Maximum payable bonus is twenty percent of the salary. - Payment of Bonus within a period of eight months from the close of accounting year.

Social Security Laws

Social Security Legislations provide for mandatory social security benefits either solely at the cost of the employer or a joint contribution of employers and employees. While protective entitlements accrue to employees, the compliance burden largely rests with employers.

Employees Provident Fund and Miscellaneous Provisions Act 1952

Objective:

To provide for institution of Provident Fund, Pension fund and deposit-linked Insurance Fund for employees

Applicability:

- Applicable to every establishment which is a factory engaged in any industry/establishment wherein twenty or more persons are employed.
- Applicable to any establishment employing twenty or more persons or such establishment as may be notified by the Central Government.
- Any establishment to which the said Act applies shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time falls below twenty.
- Applies to all employees including part time labor and contract labor drawing salaries upto INR 15,000 per month

Other Relevant Provisions:

- Contribution to Provident Fund by Employee and Employer, both.
- Employer deducts, employees share of EPF contribution and along with his share of contribution, deposits the amount in the PF account of employees.
- Contribution by Employer is 12% of (Basic + Dearness Allowance + Retaining allowance) Of which 8.33% is towards Employee Pension Scheme and 3.67% towards Employees Provident Fund.
- Contribution by Employee: - 12% of (Basic + Dearness Allowance + Retaining allowance).

Payment of Gratuity Act, 1972

Applicability:

Applicable to every factory, shop or establishment, in which ten or more employees are employed or were employed on any day proceeding twelve months

Other Relevant Provisions:

- An employee is eligible to receive gratuity only after the completion of five years of continuous service. The condition of five years does not hold valid if termination of employment is due to death or disablement. The maximum amount of gratuity payable is INR 2 million.

- Gratuity is calculated using the below formula:

  Gratuity = Last Drawn Salary x 15/& x number of years of service

  Last Drawn Salary = Basic Salary + Dearness Allowance

  Number of Years of service is rounded off to the next full year of service. For instance if an employee has completed 7 years and 11 months of years of service, 8 years of service shall be considered for the purpose of gratuity.

Maternity Benefit Act, 1961

Objective

The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits.

Other Relevant Provisions

- The Maternity Benefit Act 1961 increased the duration of maternity leave from 12 weeks to 26 weeks for two surviving children. In case of illness arising due to pregnancy, they will be entitled to additional leave with wages for a period of one month
- A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting or commissioning mother.
- A woman is entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in twelve months immediately preceding the date of her expected delivery.
- Every establishment having fifty or more employees shall have a crèche facility.
- Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the actual period of her absence.

New Labor Codes

The Central Government has taken a major initiative to enact four Labour Codes by simplifying, amalgamating and rationalising the relevant provisions of the existing Central Labour Laws. The four labour codes are as under:

- 2019 The Code on Wages 2019
- 2020 The Occupational Safety, Health & Working Conditions Code, 2020
- 2020 The Industrial Relations Code, 2020
- 2020 The Code on Social Security 2020

The New Labour Codes aim to:

- Bring about transparency in the implementation of the Labour Laws;
- Ensure that the existing Labour Laws are in sync with the emerging economic scenario;
- Eliminate complexity by bringing about uniformity in definitions;
- Enhance ease of compliance;
- Emphasize use of technology;
- Improve employment opportunities & ensure welfare & security of workers

Particulars	Code on Wages 2019	The Occupational Safety, Health & Working Conditions Code, 2020	The Industrial Relations Code, 2020	The Code on Social Security 2020
Acts Subsumed	■ Payment of Wages Act, 1936; ■ The Minimum Wages Act, 1948; ■ The Payment of Bonus Act, 1965 and ■ The Equal Remuneration Act, 1976	■ The Factories Act, 1948; ■ The Mines Act, 1952; ■ The Dock Workers (Safety, Health and Welfare) Act, 1986; ■ The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; ■ The Plantations Labour Act, 1951; ■ The Contract Labour (Regulation and Abolition) Act, 1970; ■ The Inter-state migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979; ■ The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955; ■ The Working Journalist (Fixation of rates of Wages) Act, 1958; ■ The Motor Transport Workers Act, 1961; ■ Sales Promotion Employees (Condition of Service) Act, 1976; ■ The Beedi and Cigar Workers (Condition of Employment) Act, 1966; ■ The Cine Workers and Cinema Theatre Workers Act, 1981	■ The Trade Unions Act, 1926, ■ The Industrial Employment (Standing Orders) Act, 1946 and ■ The Industrial Disputes Act, 1947.	■ The Employees' Compensation Act 1923. ■ The Employees' State Insurance Act, 1948. ■ The Employees' Provident Fund and Miscellaneous Provisions Act, 1952. ■ The Employment Exchanges (Compulsory Notification of Vacancies) Act 1959. ■ The Maternity Benefit Act, 1961. ■ The Payment of Gratuity Act, 1972. ■ The Cine-Workers Welfare Fund Act, 1981 ■ The Building & Other Construction Workers Welfare Cess Act, 1996. ■ The Unorganized Workers Social Security Act, 2008.
Applicability	■ **To all establishments where any trade, industry or manufacturing process is carried on;** ■ **To all type of employees (irrespective of their wage limit), skilled, semi – skilled, unskilled, supervisory, managerial across all sectors;** ■ **To all type of employers who engage employees for their trade, industry or manufacturing activities**	■ Applicable to all establishments having 10 or more employees and mines and docks	■ Applicable to all employers and employees	■ **To all establishments where any trade, business, manufacture or occupation is carried out;** ■ **To all type of employees (irrespective of their wage limit), skilled, semi – skilled, unskilled, supervisory, managerial across all sectors;** ■ **To gig workers/ platform workers, fixed term employees & those in the unorganized sector as well**

The four labour codes were earlier supposed to be notified on 1st April 2021. However, on account of ambiguity in the Rules to the labor codes, the implementation of these is pending.

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