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Setting Up a Business in India

The foreign investor's guide to navigating complexity in this exciting jurisdiction

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Country profile

The Indian government has been making efforts to improve ease of doing business in the country and reduce the regulatory compliance burden on businesses[1]. As a result, India's ranking in World Bank's Ease of Doing Business report improved from 142 in 2014 to 63 in 2020.

Several factors have contributed to the country's economic growth in the last decade, including an expanding services sector—which now dominates the economy—alongside greater domestic consumption, higher investment, growing infrastructure, and a reform focused government.

India is the second most populous country in the world, after China, with a population of 1.4 billion people[2], representing a fifth of the world's population. With 67% of India's people aged between 15 and 64, it will soon have the largest and youngest workforce in the world.

While India's constitution recognizes 22 local languages, Hindi is the official language and the primary tongue for 30% of the population. English is an additional language used for official purposes and is widely spoken in business circles.

India is a democratic republic with a parliamentary system of government. It has a federal government with 28 states and eight union territories. The union government shares power with state governments, which are in charge of internal security and other state issues.

The currency of India is the rupee (ISO code: INR; symbol: ₹). The terms lakh (100,000) and crore (10,000,000) are commonly used to express large numbers in the system. The Reserve Bank of India (RBI) is the central bank of the country. It is responsible for the issue and supply of the rupee, as well as the regulation of the Indian banking sector.

As of 2020, the services sector had become the main driver behind India's economic growth over the past few years, accounting for 48.9% of gross value-added growth, followed by industry with a 23.5% share, and agriculture at 18.30%. However, agriculture remains the country's largest employer, representing around 43% of the workforce[3].

In response to the COVID-19 pandemic, the government and the RBI took several monetary and fiscal policy measures to support vulnerable firms and households as well as cushion the impact of the crisis on the economy[4]. The USD 270bn package—equivalent to 10% of the country's GDP—included increased spending on health and social protection.

After Economic Survey 2023, authored by Chief Economic Advisor V Ananatha Nageswara and his team, Nageswara said "India's economic recovery post pandemic is now complete." Also according to the survey, the Indian economy is projected to grow 6.5% in 2023-2024.

1 Ministry of Commerce and Industry
2 Worldometer
3 World Bank data
4 World Bank

Why invest in India?

India is one of the world's fastest-growing economies

For the first time, foreign direct investments into the country crossed the USD 70bn mark in the 2019-20 fiscal year, recording a total inflow of USD 73.45bn, up 18% from the previous year[6].

India has the largest youth population in the world

The population is expected to rise from 1.2 billion in 2011 to 1.5 billion by 2036, an increase of 25.7% over 25 years.

India has the third-largest group of scientists and technicians in the world[7]

The government's National Infrastructure Pipeline plan is a first-of-its-kind initiative to provide world-class infrastructure across the country. An investment of INR 6,000 crores has been made in the National Investment and Infrastructure Fund (NIIF) Infrastructure Debt Financing Platform to attract debt and equity investments in infrastructure[8].

Rising global competitiveness

The Goods and Services Tax (GST), the biggest tax reform since the country's independence, has paved the way for a common national market by integrating various indirect taxes[9]. The country also introduced the Insolvency and Bankruptcy Code 2016, which helps businesses resolve insolvency issues in a timely manner.

India ranks 46 in the Global Innovation Index 2021 rankings, first in the Central and Southern Asia region and second in the Lower Middle-Income Economy Group[10].

Free trade agreements

India has signed bilateral free trade agreements (FTAs) with Sri Lanka (1998), Afghanistan (2003), Thailand (2004), Singapore (2005), Bhutan (2006), Nepal (2009), Korea (2009), Malaysia (2011) and Japan (2011).

A Comprehensive Economic Cooperation Partnership Agreement (CECPA) with Mauritius was signed in 2021.

There have also been two regional trade agreements made: the South Asian Free Trade Agreement (SAFTA, 2004) and the India-Association of Southeast Asian Nations Agreement (ASEAN, 2010).

Outside Asia, FTAs have been agreed with Chile (2006) and the MERCOSUR bloc[11].

6 Department of Promotion of Industry and Internal Trade, Government of India
7 All India Management Association, The Boston Consulting Group
8 Invest in India
6 Government of India
9 Government of India
10 World Intellectual Property Organization
11 Ministry of Commerce and Industry

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India at a glance

Capital
New Delhi

Official languages
Hindi is one of the 22 official languages; English is used for official communication

Currency
Rupee (INR)

Population
1.4 billion (2022)[12]

GDP
USD 2.66 trillion (2020)[13]

Area
3.3 million sq km

GDP per capita
USD 1,927[14]

Indian Standard Time
GMT +5:30

Telephone country code
+91

Key cities
Mumbai, Delhi, Chennai, Kolkata, Bangalore, Hyderabad

12 Worldometer
13 Worldometer
14 World Bank

How to do business in India

Entry options for foreign investors

Foreign investors can opt to do business in India as a domestic company or as a foreign company. Setting up an Indian company constitutes a foreign direct investment (FDI), while doing business in India as a foreign entity involves the opening of a liaison, project, or branch office.

Setting up as an Indian company

Foreign direct investment in the capital of a company or limited liability partnership (LLP) is allowed in all sectors outside the Prohibited Sectors list, which bans activities such as gambling, betting, atomic energy, railways, and tobacco. Investment activity may occur through the so-called automatic route, where no approval is needed from the RBI, however, prior approval is required in other cases.

In addition, any investment made by investors from countries that share a land border with India—Bangladesh, China, Pakistan, Nepal, Myanmar, Bhutan, and Afghanistan—requires government approval irrespective of the sector or activities.

Foreign companies can opt to set up wholly owned subsidiaries (WOS), joint ventures (JVs) or special purpose vehicles (SPVs) in the form of public or private companies. Foreign entities may also make investments in equity share capital, compulsorily convertible debentures, compulsorily convertible preference shares, and convertible notes.

Company

The company is considered an Indian company and will be subject to all Indian regulations (including income tax, the Foreign Exchange Management Act and the Companies Act), even though it may be completely or partly foreign owned.

A private limited company is required to have at least two shareholders, while a public limited company is expected to have at least seven shareholders, along with one resident director. Private limited companies are not subject to minimum capital requirements, have limited liability, and are separate legal entities governed by the Companies Act.

Repatriation

The profits earned by the invested company can be repatriated in the form of dividends after the payment of applicable taxes without the permission of the RBI.

Incorporation process

- **Name application:** A suitable name for the company should be selected and submitted to the Registrar of Companies (ROC), along with a brief activity description, to verify the availability of the name.
- **Digital signatures of directors:** The directors are required to apply for digital signatures.
- **Company registration:** Once the name registration is successful, the company will begin the formal incorporation process and file the Memorandum and Articles of Association with the ROC, along with other documents including proof of identity and address for directors and shareholders attested to by a notary.
- **Reporting to the RBI:** The company receiving FDI is required to submit the details of the investment in a single master form within 30 days of the allotment or transfer of shares.

Post-investment compliance

- **Commencement of business:** The company cannot commence its business until the initial subscription amount is transferred to the company bank account. Once the capital is available, the company will file the return with the ROC and can commence its business.
- **Reporting to the RBI:** The company receiving foreign direct investments (FDIs) is required to submit the details of the investment in a single master form within 30 days of the allotment or transfer of shares.

Annual compliance

- Every director will disclose their interest in other entities in Form MBP-1, in the first board meeting of each financial year—or whenever there is a change in their interests.

- **Financial statements:** The company will complete an annual account audit and submit financial statements to the ROC.
- **Annual return:** The company will file an annual return with the ROC.
- **Annual return of foreign liabilities and assets:** The company will file an annual return of foreign liabilities and assets with the RBI.
- **Filing of Ministry of Micro, Small, and Medium Enterprises (MSME) return (half yearly):** The company needs to file a return containing information about the amounts due with the ROC.
- **Filing of DPT 3 return (annual):** The company must file a return relating to the amounts outstanding, which fall under the categories exempted to be classified as deposits under the Companies Act, on March 31 each year.
- **Update of directors' Know Your Customer (KYC) form (annual):** The directors are required to update their KYC details every year.

Special purpose vehicles

Also called a special purpose entity (SPE) or special purpose corporation (SPC), an SPV is an entity that is established for a single, specific purpose, whereas other companies can perform all the activities permitted under the Memorandum of Association (MoA). SPVs are generally incorporated under the private limited company structure.

SPVs, which are basically formed to raise funds from the market and provide comfort to lenders concerned about their investment, are subject to the regulations of the Companies Act, 2013. The members of an SPV are usually the companies and individuals sponsoring the entity.

Setting up an SPV

Just like companies, an SPV must have a promoter or sponsor, usually the parent company. As the SPV is a separate legal entity, it does not affect the assets and activities of the parent company.

Advantages of SPVs

- Separate risk
- Capital is freed up
- Can leverage future earnings to raise funds
- Asset transfer
- Direct ownership of a specific asset
- Legal protection

Foreign companies also choose to the SPV route to enter into certain areas of business that are prohibited under the automatic route. In addition, government entities can form SPVs for specific projects, a portion of which is open to private-sector participants. For foreign companies, this is a convenient route for obtaining approvals from the Indian state and central government.

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Limited liability partnership

The LLP combines all the advantages of a company with the organizational flexibility of a partnership. At least two partners are required to form an LLP, and they have limited liability.

FDI into LLPs is permitted under the automatic route only in sectors or activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.

Repatriation

In an LLP, the repatriation of capital contribution is allowed without any statutory thresholds. In addition, there is no buyback equivalent tax on the distributions made. As a result, the gains made by a partner on such repatriation would be taxable only for the partner. In the event of capital contribution received by an overseas partner, it may be possible for the partner to claim relief under an applicable tax treaty.

Incorporation process

- **Name application:** A suitable name for the LLP should be selected and submitted to the ROC.
- **Digital signatures of designated partners:** The designated partners are required to have digital signatures. An application needs to be made along with the KYC documents to get Class 3 digital signatures issued. In some cases, the signatures of the subscribers may also be required.
- **Incorporation document and statement:** The proposed LLP should then proceed with its application through the Form for Incorporation of Limited Liability Partnership (FiLLiP). The application should be accompanied by a number of documents including:
  - Board resolution of the parent company including the name and address of an individual nominated to act as nominee or designated partner on its behalf
  - Proof of address of the registered office of the LLP
  - Subscriber sheet
  - Details of the LLP in which the partner or the designated partner is a director or partner
  - Consent to act as designated partners

  If all documents are in order, the registrar will issue a certificate of incorporation to the LLP.
- **Finalization of LLP agreement and filing of Form 3:** The LLP should file the LLP agreement with the ROC within 30 days after incorporation. The forms are available online. The agreement will define the rules for the operation of the LLP, rights and duties of directors, mode of contribution by partners, and profit share. Documents originating from outside India should be attested to by a notary in the country of registration.

Post-investment compliance

- **Reporting to the RBI:** The LLP receiving FDI is required to submit the details of the investment in a single master form within 30 days of allotment or transfer of shares.

Annual compliance

- **Filing of annual return:** The LLP needs to file its annual return within 60 days of the close of the financial year on March 31, i.e., by May 30 each year.
- **Statement of annual accounts and solvency:** The LLP needs to file annual accounts and a solvency statement on or before October 30 each year.
- **Annual return of foreign liabilities and assets:** The LLP should file an annual return of foreign liabilities and assets with the RBI.
- **Update of designated partners' KYC:** Designated partners with director identification numbers need to update their KYC details every year.

Entry as a foreign entity

If foreign investors wish to explore the Indian market or plan to enter the country only for a specific project or time frame, they may set up business in India as a foreign company. This can be in the form of a liaison office (LO), branch office (BO), or project office (PO).

Liaison office

Foreign companies may set up an LO in India to act as a channel of communication between the head office abroad and the operations in India, with the aim of promoting and exploring opportunities for the parent company.

Permitted activities for LOs

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

LOs are not allowed to undertake any business activity in India and their expenses are met entirely by the parent company through inward remittances.

Permission to set up an LO is granted by the RBI generally for a period of three years, which may be extended for a further three years if certain conditions are met.

Eligibility criteria for LOs

- A profit-making track record in the home country during the three previous financial years, in addition to a net worth above USD 50,000 or its equivalent.
- An applicant that doesn't meet these criteria and is a subsidiary of another company may submit a Letter of Comfort (LOC) from its parent or group company, subject to the condition that the parent or group company satisfies the prescribed criteria for net worth and profit.

Repatriation of profits

As LOs cannot undertake business activity, the repatriation of profits is not applicable.

Foreign companies engaged in manufacturing or trading activities are allowed to set up a BO in India with specific approval of the RBI. BOs are permitted to represent the parent company and engage in the export and import of goods.

Permitted activities for BOs

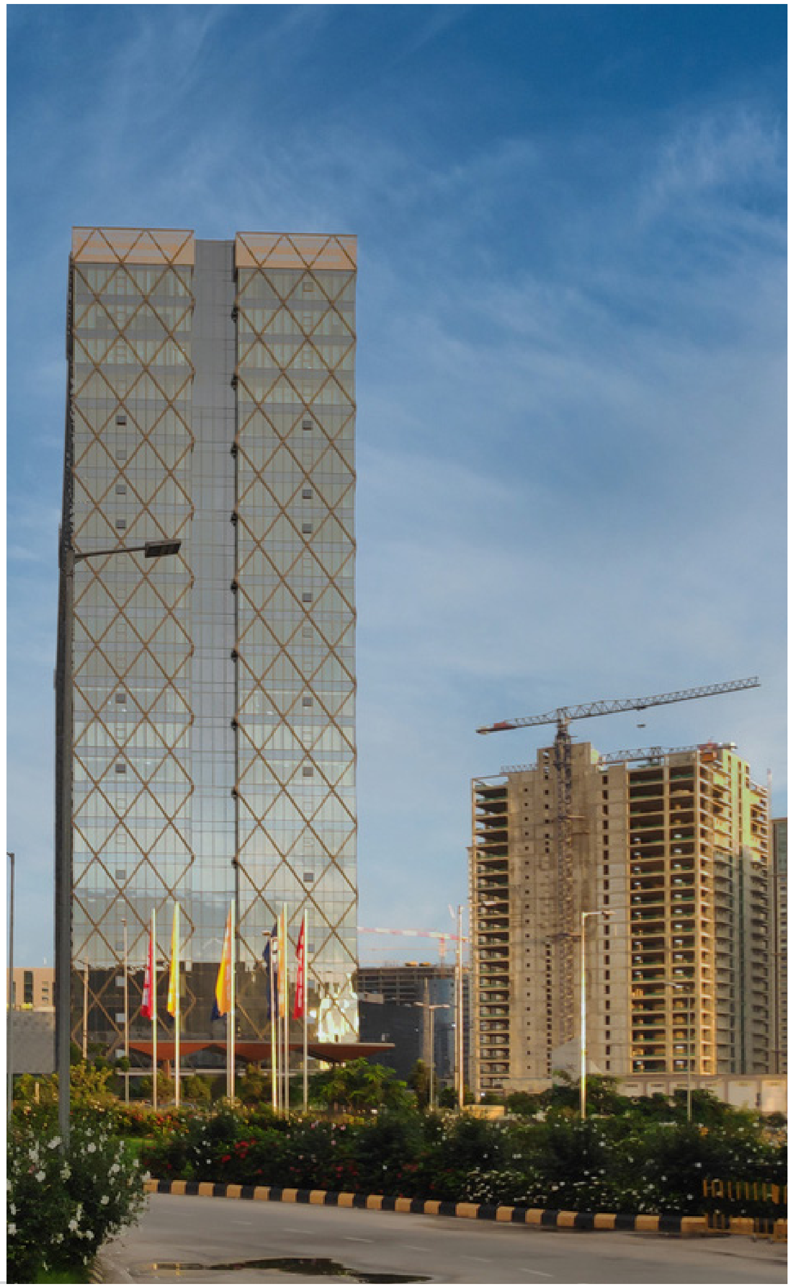
The branch office should be engaged in same the activity of the parent company:

- Export and import of goods
- Supplying professional or consultant services
- Carrying out research work in which the parent company is engaged
- Promoting technical or financial collaboration between Indian companies and the parent or overseas group company
- Representing the parent company in India and acting as buying and selling agent in India
- Supplying services in information technology and the development of software in India
- Supplying technical support to the products supplied by the parent or group companies
- Representing a foreign airline or shipping company

BOs cannot undertake any retail trading activity or manufacturing process.

Eligibility criteria for BOs

BOs must have a profit-making track record in the home country during the five previous financial years and a net worth above USD 100,000 or its equivalent. An applicant that doesn't meet these criteria and is a subsidiary of another company may submit a LOC from its parent or group company, subject to the condition that the parent or group company satisfies the required criteria for net worth and profit.



Repatriation of profits

- BOs are allowed to repatriate their profits after applicable Indian taxes, once they provide the following documents:
- A certified copy of the audited balance sheet and profit-and-loss account for the relevant year.
- A chartered accountant's certificate stating a) the accrual of the remittable profit; b) that the entire remittable profit has been earned by undertaking the permitted activities; and c) that the profit does not include any profit on revaluation of the assets of the branch.

Project office

Foreign companies planning to carry out specific projects in India can set up temporary project office (PO) or site offices in India for this purpose. The RBI has granted general permission to foreign entities to set up project offices provided they have secured a contract from an Indian company to execute a project in India. Also, the project must have secured the necessary regulatory clearances.

Eligibility criteria

The project should also meet one of the following criteria:

- It should be funded directly by inward remittance from abroad; or
- The project should be funded by a bilateral or multilateral international financing agency; or
- The company or entity in India awarding the contract has been granted a term loan by a public financial institution or an Indian bank for the project.

If none of the above criteria is met, the company looking to establish a PO in India must make a specific request to the RBI for approval. The foreign entity only needs to file a report to its local RBI office providing details of the project or contract. A PO is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign parent company.

Repatriation of profits

Intermittent remittances by POs may be allowed pending winding up or completion of the project, provided the RBI is satisfied with the legitimacy of the transaction, subject to the following.

- The PO submits a certificate from the auditors or chartered accountants stating that sufficient provisions have been made to meet liabilities in India, including income tax.
- An undertaking from the PO that the remittance will not affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.

LO, BO, PO set-up process

The process and documentation for setting up an LO, BO, or PO are quite similar.

- A foreign entity that meets eligibility conditions must receive approval from the RBI or from an authorized bank to operate a LO, BO, or PO in the country. The approval process normally takes four or five months. The following documents need to be provided:
  - » Copy of the Certificate of Incorporation or Registration
  - » MoA and Articles of Association attested by a notary in the country of registration
  - » Audited balance sheet of the applicant company for the past three or five years (in the case of branch office or liaison office respectively)
  - » Bankers' report from the applicant's bank in the host country
  - » Or country of registration showing the number of years the applicant has had banking relations with that bank
  - » Power of attorney for the signatory of the application if the head of the overseas entity is not the signatory on the form
- Within 30 days of establishment, the LO, BO, or PO office must register with the ROC through the Ministry of Corporate Affairs online portal. The following documents must also be provided:
  - » Certified copy of the charter, statutes, or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company
  - » List of directors and secretary of the foreign company
  - » Power of attorney or board resolution in favor of the authorized representative(s)
  - » RBI approval letter
  - » Copy of permission letter of other authorities or regulators, if applicable
- All new entities setting up an LO, BO, or PO in India should submit a report to the director general of police (DGP) of the state concerned within five working days of the BO becoming functional.
  - » In addition to the above requirements, a foreign company establishing a PO in India should file the following details with the RBI:
    - – Name and address of the foreign company
    - – Reference number and date of letter awarding the contract
    - – Details of the authority awarding the project or contract
    - – The total amount of contract
    - – Address, email address, telephone number, and fax number of the PO
    - – PO tenure
    - – Brief summary of the project
    - – The authorized dealer branch where the account has been opened and the foreign currency in which the account is opened
    - – An undertaking that the PO is eligible to fulfil the permission to operate

Annual compliance

Each year the LO, BO, or PO must file an annual activity certificate with the RBI to verify the activities are within its charter. The annual activity certificate must also be filed with the director general of Income Tax.

File the financial statement and annual return with the ROC.

Taxation

Goods and services tax

India overhauled its indirect taxation system in 2017 with the introduction of the Goods and Services Tax (GST), replacing a number of multiple taxes and duties prevalent before. It was introduced principally to bring transparency into the administration and reduce the cascading effect of taxes on the cost of goods and services, thereby creating a common national market.

Goods and services subject to GST are categorized under four tax brackets: 5%, 12%, 18%, and 28%. However, GST is not applicable to products such as fish, eggs, fresh meat, dairy products, fresh fruit, and vegetables.

Most goods are covered by the 12% and 18% tax brackets, while services are generally taxable at 18%. The number of products covered in the highest tax bracket has significantly reduced since the introduction of GST. Currently, the 28% tax bracket covers mostly luxury items including motor vehicles, personal aircraft, and yachts.

Corporate income tax

Corporate tax in India is levied on the profits of the company after deducting applicable expenses and deductions. All domestic companies are liable for tax on their global income, while foreign companies are liable for tax in India with respect to income received or accrued in India. The effective corporate tax rate (base rate plus surcharge plus cess [a form of tax charged over and above direct and indirect taxes]) depends on whether the company is domestic or foreign as well as its level of taxable income in the previous financial year. In India, the financial year ends on March 31.

Tax, surcharge, and cess rates could be changed by the Finance Act passed by the government every year.

Domestic companies

Currently, corporate tax for domestic companies with turnover up to INR 4bn is set at 25%, while companies with turnover above INR 4bn pay corporate tax of 30%. In addition to corporate tax, surcharge, and health and education cess of 4% is also applicable. However, the surcharge is payable only if the annual income of a company exceeds INR 10m (at the rate of 7%). If the annual income exceeds INR 100m, the surcharge is levied at a rate of 12%.

Additionally, domestic companies can opt to pay a 22% corporate tax rate plus surcharge at 10% and health and education cess at 4%, for an effective rate of 25.168%.

A domestic company may take the benefits of the lower corporate tax rate (15% plus applicable surcharge and cess) if it was incorporated and registered on or after October 1, 2019 and has begun manufacturing on or before March 31, 2023. The company should be engaged in the manufacture, production, or distribution of goods.

Foreign companies

The corporate tax rate for foreign companies depends upon the tax agreement or treaty between India and the country of origin of the company. Any royalty or fee for technical services received by a foreign company from an Indian concern or the Indian government is taxed at 50%. Any other income is liable to be taxed at 40%.

In addition to corporate tax, the surcharge and health and education cess are also applicable. The cess rate is 4% and is applicable irrespective of profit and turnover.

A surcharge of 2% is levied if the income is between INR 10m and INR 100m, and if it exceeds INR 100m, the applicable surcharge is 5%.

Transfer pricing

Every individual who has entered an international transaction and a specified domestic transaction with associated enterprises is required to carry out a transfer pricing study and an audit.

Tax rebates

India's tax law provides a number of rebates and deductions. In some cases, interest earned by foreign companies can be taxed at reduced rates of between 5% and 20%. If the company has set up new infrastructure or energy sources, they too are subject to deduction.

A company can carry forward any losses incurred for a maximum of eight years. And donations to charitable organizations can be eligible for exemptions ranging between 50% and 100%.

Dividend tax

Dividends paid to a shareholder residing in India attract a Tax Deducted at Source (TDS) at a rate of 10%, but only if the dividend exceeds INR 5,000. This system brings dividend taxation in line with that of most other countries. In the case of non-resident shareholders, TDS will be at 20% plus surcharge and cess as applicable. However, this can be reduced if a tax treaty applies.

Withholding tax

The central government is responsible for the collection of withholding tax. Employers have to deduct the tax at the time of payment to non-resident individuals (NRI).

To be a resident Indian, the taxpayer must have either stayed in India for at least 182 days in the previous year; more than 60 days in the previous fiscal year; or more than 120 days in the previous year if the taxable income exceeds INR 1.5m, and must have been present in India for a total of at least 365 days in the four years leading up to the previous year.

If these conditions aren't met, the taxpayer is given NRI status. The prevailing withholding tax rates on payments made to non-residents are:

- Interest: 20%
- Dividends paid by domestic companies: 20%
- Royalties: 10%
- Technical services: 10%
- Other services:
  - Individuals: 30% of income
  - Companies: 40% of income

These are general rates and do not apply to countries that have a Double Taxation Avoidance Agreement (DTAA) with India. Withholding tax returns are filed quarterly.

Customs policy

Companies intending to import goods must apply to the directorate general of Foreign Trade and obtain an importer and exporter code (IEC) number.

In India, customs duty is levied on goods imported into the country and is payable at the time of customs clearance. Since the enactment of the Goods and Services Act 2017, major changes have been made with respect to the components of customs duty.

The components of customs duty comprise:

- BCD – Basic custom duty (typically ranging between 10% and 40%)
- SWS – Social welfare surcharge (10% on BCD)
- IGST – GST rate applicable on local supply
- Compensation cess – applicable on a few goods

India prohibits the import of sensitive goods such as coins, obscene books, wastepaper containing pages of holy books, fictitious stamps, explosives, narcotic drugs, rock salt, and saccharine. Other restricted goods include large quantities of cosmetics, toiletries and food, tobacco and alcohol products, electronic equipment and appliances (only one of each is allowed), and gold or silver in any form other than jewelry .

Professional equipment may be imported duty free with evidence or certificates proving qualifications.

Special economic zones

Special economic zones (SEZs) in India offer incentives to resident businesses, such as competitive infrastructure, duty-free exports, tax incentives, and other measures designed to make it easier to conduct business in the country. There are at least 232 SEZs in operation. Investors can apply to the Indian Board of Approval to establish a new SEZ.

The amount of land being proposed will determine the type of SEZ that will be granted:

- **Multi-sector SEZ:** A minimum of 1,000 hectares of land
- **Sector-specific SEZ:** Minimum 100 hectares
- **Free trade and warehousing zone:** Minimum 40 hectares
- **IT, handicrafts, biotechnology, non-conventional energy and gems:** Minimum 10 hectares

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Employment and labor regulation

In September 2020, India's parliament approved three new codes to consolidate the country's labor legislation and compliance regulations. The new regulations make it easier for companies to be flexible in their hiring and firing decisions, as well as in shutting down operations in the country. For example, companies with up to 300 employees can now dismiss staff without seeking government permission. Conditions restricting workers' right to strike have also been introduced. At present the employment and labor laws include:

Social security system

Social security in India is currently governed by the Employees' Provident Fund Organisation (EPFO). Employers and employees must each contribute 12% of salary. The employer contributes 8.33% of a salary to the employee's pension fund (to a maximum of INR 15,000 per month). Foreign nationals working in India are also required to make these payments, unless they are from a country with bilateral social security agreements with India.

At establishments with 10 or more people, employers are also required to pay a gratuity to employees on superannuation or retirement, termination of service, resignation, or disablement due to the employee suffering an accident or disease. If an employee dies after an accident or disease, the gratuity is paid to a nominee or, if no nomination has been made, to the employee's heir. If the nominee or heir is a minor, the gratuity is held by a controlling authority or bank until they reach adulthood.

An employee is only eligible for a gratuity where he or she has completed continuous service of at least five years. However, in the case of death or disablement of an employee, the gratuity is payable even if the employee has not completed five years of service.

The rate of gratuity payable to employees is 15 days' salary for every completed year of service or a part thereof exceeding six months, subject to a maximum amount prescribed. The new labor code also provides for fixed-term employees to receive a gratuity after the termination of a fixed-term contract.

Establishments employing 10 or more persons are also required to contribute towards employee state insurance, providing for benefits in cases of sickness, maternity, employment injury, and certain other criteria. Employees drawing wages below INR 21,000 per month (INR 25,000 per month in the case of persons with disability) are eligible for benefits. The average rate of contribution currently is 0.75% of the wages. Employers are obliged to pay 3.25% of the wages paid in respect of their employees in every wage period.

Maternity and paternity leave

Female employees are entitled to maternity leave with wages for a period of 26 weeks for the birth of their first two children. If the female employee already has two children, maternity leave with wages is reduced to a period of 12 weeks. A crèche facility is mandatory at every establishment with 50 or more employees.

Men working for the government or public sector are entitled to 15 days of paternity leave, but this is not compulsory for private-sector employees. Large private companies tend to draft their own paternity benefit policies.

Sexual harassment of women in the workplace (prevention, prohibition, and redress)

The POSH Act gives women protection against sexual harassment in the workplace and prescribes detailed guidelines for employers and employees on the prevention and redress of complaints of sexual harassment. Establishments employing 10 or more employees must establish an internal committee to investigate complaints of sexual harassment in the workplace.

Termination

An employment relationship may terminate in these cases:

- Automatically on completion of the agreed term
- When the employee has reached the age of superannuation
- Signing a mutual termination agreement by either party as agreed in the contract

Indian labor regulations also recognize termination of employment for cause. The employer may dismiss an employee summarily for misconduct without notice. However, an internal inquiry should precede a dismissal for misconduct, except in cases involving moral turpitude and criminal acts.

Severance pay entitlement is 15 days' wages per year of service, as long as the employee has served at least five years.

Foreign employees

Employing a foreign national in India is allowed subject to fulfilment of immigration regulations. Most of the Indian labor and employment laws apply to foreign nationals only if they arrive in India as employees of an Indian company, as employees of the Indian branch, or liaison office of a foreign company.

Work permits

Foreigners intending to work in India have to apply for an employment visa (eVisa) at the Indian embassy or consulate in country of their residence.

eVisas are issued only to highly skilled, specialized, or qualified persons and professionals, relating to jobs for which no local Indian workers are available. An eVisa is not granted for routine, ordinary, or secretary jobs. The minimum yearly salary threshold for an eVisa is USD 25,000.

Foreign nationals holding an eVisa valid for longer than 180 days are required to register with the local District Foreigners Registration Officer or Foreigners Regional Registration Office within 14 days of their arrival in India.

National holidays

All employees are entitled to three paid national holidays in India. They are Republic Day (January 26), Independence Day (August 15), and Mahatma Gandhi Jayanti (October 2). Some states have additional holidays.

Annual leave

Employees are entitled to paid annual leave at the rate of one day for every 20 days of work performed in the previous calendar year, provided the employee worked for at least 240 days in the previous calendar year. Leave duration depends on the sector, state, and company internal policies. As a result, leave entitlements can range between 20 and 30 days of paid leave per year, including casual and sick leave.

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Business hours

Working hours in India can vary depending on the state and the business sector. The overall national standard is set at a maximum of 48 hours per week.

Business hours range from eight to 10 hours a day—typically between 9 a.m. and 5 p.m. IST—while working days per week vary between five and six, depending on the type of organization.

Minimum wage and overtime

India has a national minimum wage rate, which in 2022 was INR 178 per day. Any work in excess of 48 hours per week is considered overtime and is paid at double the normal rate. Employees should not work more than two hours of overtime per day. Employers that flout working-hours rules can face a maximum of two years in prison and a fine of INR 100,000 under the new labor code.

HR legislation

As well as obtaining licenses and registrations, making contributions, maintaining registers, and filing periodical returns under the applicable labor and employment legislations, employers in India are expected to:

- Ensure safe, healthy, and sanitary conditions for their employees
- Provide rest rooms and first aid appliances
- Provide a safe working environment at the workplace

How CSC can help you invest in India

While India has made efforts to simplify processes for foreign investors, its business environment remains complex. Many processes and regulations have been simplified, but foreign companies may find it difficult to understand compliance requirements and regulatory formalities. Many challenges remain—such as deciding on the appropriate structure and location, dealing with infrastructure and labor concerns, as well as understanding tax issues.

Before entering the Indian market, foreign investors should rely on professional advice to navigate these complex matters. Working with a trusted partner is therefore essential.

Who we are

CSC provides knowledge-based solutions for every phase of the business life cycle, helping businesses form entities, maintain compliance, execute transaction work, and support real estate, M&A, and other corporate transactions in hundreds of U.S. and international jurisdictions.

We work with some of the world's largest banks and commercial lenders to reduce risk in their lien portfolios, improve their transaction speeds, and create a secure environment for their financial processing needs. We also provide solutions for secure real estate document preparation and recording. We have more than 900 experts in Bangalore, Channai, and Mumbai who carry out a wide range of services, including funds and IT.

We are the trusted partner for 90% of the Fortune 500®, nearly 10,000 law firms, and more than 3,000 financial organizations. Headquartered in Wilmington, Delaware, USA, since 1899, we are a global company capable of doing business wherever our clients are—and we accomplish that by employing experts in every business we serve.

What we can do

We assist foreign investors with the incorporation process and compliance within Indian companies, as well as providing application, registration, and compliance services for those who opt to enter India as a foreign entity.

We also provide tax regulatory services, entity management, including accounting and reporting, asset assurance services, transaction support, and risk advisory services.

Entity formation

- Formation and implementation
- Domiciliation and management
- Special purpose vehicle (SPV) Administration services
- Foreign portfolio investment (FPI) and foreign venture capital investor (FVCI) registrations

Entity management

- Corporate accounting and reporting
- SPV accounting and reporting
- Corporate secretary and legal administration
- Independent Director and Fiduciary services
- Payroll services
- Human resource consulting
- Document execution
- Project management

Asset Assurance services

- Inventory audit
- Stores compliance audit
- Fixed assets verification
- Mystery shopping

Risk Advisory services

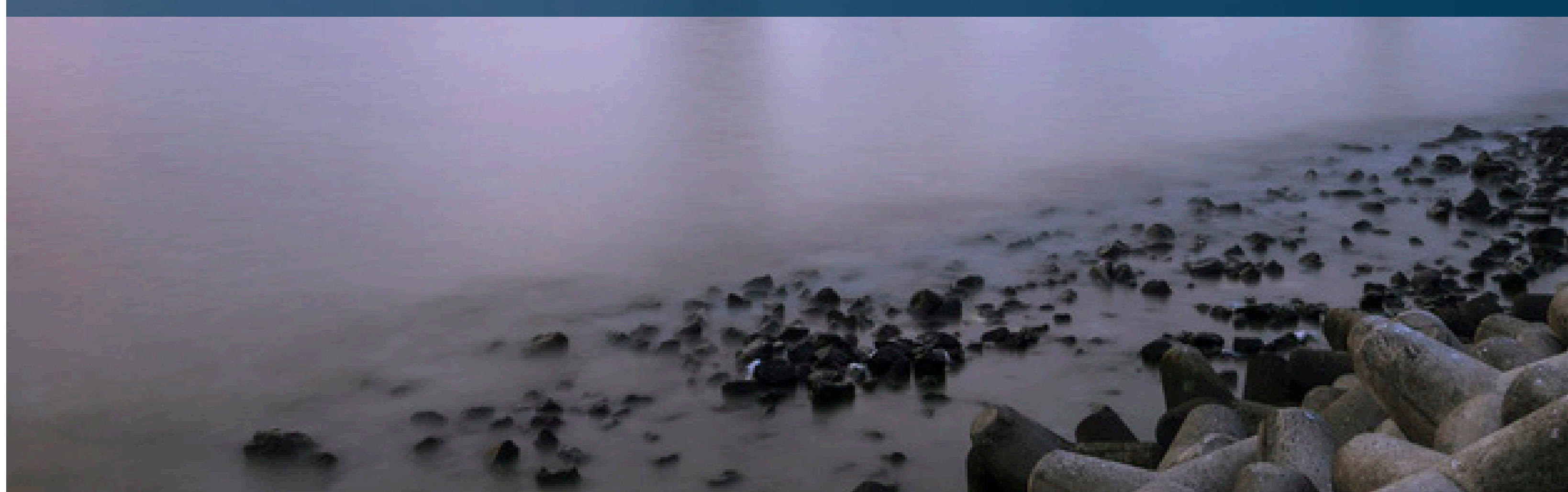
- Internal financial controls
- Management audits
- Information systems audit
- Corporate Health Check—pre or post diligence

Tax Regulatory services

- Withholding tax filings
- Annual income tax return filings
- Advance tax filings
- Goods and services tax (GST) filings
- Health checks
- Services to expats

Fund administration

- Fund accounting
- Investor reporting
- Fund compliances



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cscglobal.com

251 Little Falls Drive, Wilmington DE 19808

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