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QUICK GUIDE TO INVESTING IN INDIA

Useful information for foreign entrepreneurs wishing to invest in India

December 2007

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The information hereinafter provided is for general guidelines only and is not exhaustive. Besides this does not substitute or eliminate in any manner the requirement of obtaining specific opinion and guidance from experts in respect of any investment decision to be made by a foreign investor. Therefore, for taking any investment decision or any other decision based on this information, it is necessary that specialized legal advice be obtained before such decision is taken

❖ About India

India, the fastest growing free market democracy in the world, with consistent growth, performance and abundant skilled manpower providing enormous opportunities for investment. India is the 7th largest and second most populous country in the world. It is the 4th largest economy in the world. The Government of India's ambitious economic reforms aimed at liberalising the economy and stimulating foreign investment has moved India firmly into front-runners of rapid growing global economies. Today India is one of the most exciting emerging markets in the world, due to sustained economic policies of the government. The abundant trained managerial and technical manpower that matches the best manpower available in any part of the world provides an edge in the global competition. The country has largest number of middleclass population exceeding population of U.S.A or European Union providing a vast market for the industrial/service sector growth. The country has autonomous institutions offering transparent environment that guarantees security for long-term investment. The country has free and vibrant press, well-established independent judiciary, sophisticated accounting systems and a user-friendly intellectual property regime.

❖ Key Indicators

General indicators	Demographic indicators	Economic Indicators																		
<p>Area: 3,287,240 Sq. Km.</p> <p>Capital: New Delhi</p> <p>Govt: Federal Republic</p> <p>Adm. Divisions: 28 states (divided into 593 districts), 1 National Capital Territory and 6 Union territories</p> <p>Official languages: Hindi and English (used by the Union Govt. of India) + 22 National languages used by States and Union territories with about 844 different dialects.</p> <p>Currency: Rupee (Rs. or INR)</p> <p>Foreign Currency Exchange Rates*:</p> <table border="1"> <thead> <tr> <th>Foreign Currency</th> <th>Equivalent in INR</th> </tr> </thead> <tbody> <tr> <td>United States Dollar</td> <td>Rs. 39.35</td> </tr> <tr> <td>Great Britain Pound</td> <td>Rs. 80.36</td> </tr> <tr> <td>Japanese 100-Yen</td> <td>Rs. 35</td> </tr> <tr> <td>EURO</td> <td>Rs. 57</td> </tr> </tbody> </table> <p>* Above stated rates as on 14-12-2007.</p> <p>Major Cities: Ahmedabad, Bengaluru, Chandigarh, Chennai, Hyderabad, Jaipur, Kolkata Mumbai, New Delhi, Noida and Pune</p> <p>Major International Air-Ports: Ahemdabad, Amritsar, Bengaluru Chennai, Hyderabad, Kochi, Kolkata, Mumbai, New-Delhi and Thiruvanathapuram</p>	Foreign Currency	Equivalent in INR	United States Dollar	Rs. 39.35	Great Britain Pound	Rs. 80.36	Japanese 100-Yen	Rs. 35	EURO	Rs. 57	<p>Population: 1.028 Billion as per 2001 census</p> <p>Pop. Growth rate: 1.93% as per 2001 census</p> <p>Density of population: 324 persons / sq km</p> <p>Birth rate: 24.80 (as per 2001 census)</p> <p>Pop. Composition: 80.5% Hindus, 13.4% Muslims, 2.3% Christians, 3.8% Others (Sikhs, Buddhists, Jains)</p> <p>Labour force: 56.9 % of population between the age of 15 to 59 years old can assure the availability of trained workforce for the future growth</p> <p>Literacy rate: 65%</p> <p>Male literacy: 75.26% as per 2001 census</p> <p>Female: 53.67% as per 2001 census</p> <p>Urban Literacy Rate: 79.9% as per 2001 census</p> <p>Rural Literacy Rate: 58.7% as per 2001 census</p>	<p>GDP: USD 242.97 billion for quarter ending July – Sep 2007</p> <p>GDP Growth Rate: 9 %</p> <p>GDP Composition: 54.6% from services, 27.9% from mainstream industry, 17.5% from agriculture</p> <p>Imports: USD 109.20 billion for the period Apr – Sep 2007</p> <p>Principal Imports: Petroleum, Capital Goods, Gold and precious stones, Chemicals, Edible oils, Electronics, Automobiles and cereals etc.</p> <p>Exports: USD 72.28 billion for the period Apr – Sep 2007.</p> <p>Principal Exports: Textile, Readymade Garments, Computer software, Pharmaceuticals, Chemicals, Engineering products, Gems and jewellery etc.</p> <p>Foreign Exchange Reserve: 273.55 USD Billions as on 7th Dec, 2007.</p> <p>The Sector wise Major inflow of FDI as on 31st December, 2006:</p> <table border="1"> <thead> <tr> <th></th> <th>Amount in US \$ Millions</th> </tr> </thead> <tbody> <tr> <td>1.Electrical Equipments (Including computer software and electronics)</td> <td>6 922.69</td> </tr> <tr> <td>2.Services Sector</td> <td>6911.43</td> </tr> <tr> <td>3.Telecommunication</td> <td>3861.13</td> </tr> </tbody> </table>		Amount in US \$ Millions	1.Electrical Equipments (Including computer software and electronics)	6 922.69	2.Services Sector	6911.43	3.Telecommunication	3861.13
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<p>Major Sea Ports: Chennai, Cochin, Kandla, , Kolkata, Mumbai and Vishakha patanam</p> <p>Major Industries:</p> <p>Textiles, chemicals, food processing, steel, transportation equipment, cement, mining, petroleum, machinery and software.</p> <p>Main Agriculture - products: Rice, wheat, oilseed, cotton, jute, tea, sugarcane, potatoes;</p> <p>Major Stock Exchanges:</p> <p>Bombay Stock Exchange, National Stock Exchange, other regional stock Exchanges at Kolkata, Delhi, Chennai, Hyderabad and Bengaluru</p>	<p>Life expectancy: (as on Sep 2005)</p> <p>Male – 63.9 years</p> <p>Female – 66.9 years</p> <p>Sex ratio: (as per 2001 census)</p> <p>933 females for every 1000 males</p>	<table border="0"> <tr> <td>4.Transport Industry</td> <td>3545.50</td> </tr> <tr> <td>5.Fuel (Power and Oil Refinery)</td> <td>2773.32</td> </tr> </table> <p>FDI Inflow- Country wise as on 31st December 2006. The top 5 countries are as:</p> <p style="text-align: right;">Amount in US \$ Millions</p> <table border="0"> <tr> <td>1. Mauritius</td> <td>15999.54</td> </tr> <tr> <td>2.Unites States of America</td> <td>5645.17</td> </tr> <tr> <td>3.UnitedKingdom</td> <td>3661.62</td> </tr> <tr> <td>4. Netherlands</td> <td>2482.09</td> </tr> <tr> <td>5.Japan</td> <td>2175.60</td> </tr> </table>	4.Transport Industry	3545.50	5.Fuel (Power and Oil Refinery)	2773.32	1. Mauritius	15999.54	2.Unites States of America	5645.17	3.UnitedKingdom	3661.62	4. Netherlands	2482.09	5.Japan	2175.60
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Time Zone: Indian Time is 5 ½ hours ahead of Greenwich Mean Time (GMT)

Business Hours:

Normal business hours in the Industry and Government sector are between 9 A.M. to 6 P.M. during the weekdays i.e. from Monday to Friday. Some of the Industrial units and offices also work on Saturday and Sunday is weekly holiday.

National and Public Holiday:

There are three national holidays during the year, Republic day 26th January, Independence Day 15th August and Gandhi Jayanti 2nd October. Apart from this, there are public holidays declared by Central and State Governments.

❖ **Government and Administration**

India is a Union of States. It is a Sovereign Socialist Democratic Republic with a parliamentary system of government, which is federal in structure with certain unitary features. President is the constitutional head of state and Union executive consists of President, Vice- president and Council of ministers headed by the Prime Minister. The Parliament of the Union consists of two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). States have Legislative Assemblies comprising of members elected by the people. There is a Governor for each State and the executive power is vested in him. The council of Ministers with the Chief Minister as its head advises the Governor in discharging the executive functions.

❖ **Central Industrial Policy**

The Government's liberalization and economic reforms programme aims at rapid substantial economic growth, and to integrate with the global economy in a harmonised manner. The industrial policy of Central Government primarily focuses on following:

- Deregulating Indian industry;
- Allowing the industry, freedom and flexibility to market forces and
- Providing a policy regime that facilitates and fosters growth of Indian industry

Government has announced various measures and procedural simplification to pursue these objectives in different areas like: Liberalisation of Industrial Licensing Policy, Introduction of Industrial Entrepreneurs' Memorandum (IEM) for Industries not requiring compulsory license, Liberalisation of the Locational Policy, setting up Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/Special Economic Zones(SEZ) and adopting liberalized Policy for Foreign Direct Investment (FDI).

❖ States Industrial Policy:

Under the federal Structure of Governance, the States have been given ample powers to formulate and implement their industrial policy for development of industrial setup in the states. Each state have its own industrial policies and based on which they provide various incentives to industry. The state Industrial policies under the broad framework of Central Industrial policy provide robust structure for the Industrial growth in the country. Some of the State Industrial policies like Tamil Nadu State Industrial Policy-2007, Maharashtra State Industrial policy 2001 are providing impetus for the economic growth in the state. Maharashtra, Tamil Naidu, Harayana, Gujarat, Karnataka and Andhra Pradesh have been most promising destinations for foreign direct investment in recent years.

STATES, NCR AND UNION TERRITORIES / CAPITALS			
Andhra Pradesh	Hyderabad	Nagaland	Kohima
Arunachal Pradesh	Itanagar	Orissa	Bhubhaneshwar
Assam	Dispur	Punjab	Chandigarh
Bihar	Patna	Rajasthan	Jaipur
Chattisgarh	Raipur	Sikkim	Gangtok
Goa	Panaji	Tamil Nadu	Chennai
Gujarat	Gandhinagar	Tripura	Agartala
Harayana	Chandigarh	Uttar Pradesh	Lucknow
Himachal Pradesh	Simla	Uttaranchal	Dehradum
Jammu and Kashmir	Srinagar/Jammu	West Bengal	Kolkata
Jharkhand	Ranchi	N.C.T. of Delhi	Delhi
Karnataka	Bangalore	Andaman & Nicobar Islands	Port Blair
Kerala	Thiruvananthpuram	Chandigarh	Chandigarh
Madhya Pradesh	Bhopal	Dadra & Nagar/Haveli	Silvassa
Maharashtra	Mumbai	Daman & Diu	Daman
Manipur	Imphal	Lakshadweep	Kavaratti
Meghalaya	Shillong	Puducherry	Puducherry
Mizoram	Aizwal		

❖ State incentives

Selecting a good industrial location is a major decision in India, which requires a benchmarking between 28 states, a NCR and 6 Union territories. Land revenues, sales tax and VAT are matters of the states, and several states offer investment benefits that are location-specific. The location of industrial establishment is chosen in the state offering maximum benefits in taxes, having adequate infrastructure, provide transparency and quick in granting of approval, permits etc.

❖ Foreign Direct Investment Policy

The Dream of foreign direct investment in India had taken shape after the Liberalization policy of Government of India adopted in 1991. The process of foreign direct investment started from few sectors and soon opened up for almost all sectors. The Foreign Direct Investment is governed by FEMA (Foreign Exchange Management Act, 1999) and various regulations/ guidelines issued by Central Government/ Reserve Bank of India (RBI).

Foreign Direct Investment in India is allowed on almost all the sectors except

1. Proposal that requires an industrial license and cases where foreign investment is more than 24% in the equity capitals of the units manufacturing items reserved for small scale industries.
2. Proposals in which foreign collaborators has previous venture/ tie-up in India.
3. Proposal relating to acquisition of shares in an existing Indian company in favour of a foreign non-resident Indian/ overseas corporate body investor, and proposal falling outside notified sectoral policy/ caps or under sectors in which FDI is not permitted.

Foreign Investment Promotion Board (FIPB) (Ministry of Economic Affairs, New Delhi) is a competent body specifically entrusted expediting the proposals of foreign direct investment. The FIPB shall consider and recommend the proposal falling in non-automatic route to Ministry of Finance/ Cabinet committee on economic affairs for approvals.

Foreign Investment Implementation Authority:

The Government of India has set up Foreign Investment Implementation Authority (**FIIA**) to facilitate implementation of approved foreign direct investment proposals by providing proactive care service to the foreign investors, helping them to obtain approvals and sorting out their operational problems.

❖ Registering and approval system

Two approval systems for FDI are available in India.

The Automatic Route , which now covers a major share of industrial activities, does not require any prior approval either by the Government or other institutions.	The Prior Approval Route , which covers a few sectors (as listed hereinafter), requires a prior approval. This approval is generally conveyed within 30 days of application.
Specific sectors/activities where a prior approval is required:	
<ul style="list-style-type: none"> - Atomic minerals - Broadcasting - Courier service - Defence and strategic industries - Investing companies in infrastructure & service sector 	<ul style="list-style-type: none"> - Petroleum refining (except for private sector oil refining)/ Natural gas / LNG pipelines - Print Media - Postal Services - Tea sector - Development of integrated township - Satellite – establishment and operation

In both cases, the investors are required to notify the concerned Regional office of the **Reserve Bank of India** of receipt of inward remittances within 30 days of such receipt and to file the required documents with that office within 30 days of issue of shares to the foreign investors.

FDI is permitted in principle with sector specific ceiling for equity holdings in the following sectors:

Air-Ports	74%	Satellite – establishment and operation	74%
Banking – Private sector Banks	74%	Insurance	26%
Air Transport Service	49%	Telecom [Automatic route up to 49%]	74%
Mining (precious stones & Diamonds) [Under automatic route]	74%	Trading- Single Brand Product retailing	51%
Assets Reconstruction Companies	49%	Atomic Minerals	74%
Cable Network	49%	Direct to Home	20%
Setting up Hardware facilities	49%	Up-linking a News & current affairs TV channel	26%
Defence Production	26%	Investing Companies in infrastructure/service sector	49%
Print Media (News papers and Periodicals)	26%	Petroleum and Natural Gas Sector (In case of Public Sector units only)	26%

While the initial approvals are impressively quick to obtain, business ventures need to secure several downstream approvals, reflecting the administrative constraints of the investment process. During its initial implementation stages, every normal business enterprise requires liaison with regulatory agencies including several state authorities.

❖ FDI Prohibition

Thanks to successive reforms, foreign investments are allowed in most sectors. However, foreign direct investment is not allowed in Retail Trading, Lottery business, Atomic energy, Gambling and betting, Housing and real estate business (only non resident Indians are allowed to invest), agricultural and plantation activities.

Entering Indian Market:

❖ Incorporation and establishment of business entity in India

Foreign companies can establish a business presence in India either as foreign legal entities – liaison office / branch office / project office – or as Indian legal entities – Joint Venture / subsidiary - both in the form of private or public companies.

Incorporation of companies

The formation of a company is governed by the Companies Act, 1956, which differentiates between public and private companies. The features of these two categories of companies are listed below:

Private Limited Company (Pvt. Ltd.)	Public Limited Company (PLC)
<ul style="list-style-type: none">- Number of members between 2 and 50;- Minimum paid up Equity: INR 100,000;- Restricts the right to transfer its shares;- Prohibits any invitation to the public to subscribe to its shares/debentures.- Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives	<ul style="list-style-type: none">- Minimum of 7 shareholders (no restriction on maximum no. of share holders);- Minimum paid up Equity: INR 500,000;- No restriction on the transfer of shares;- Right to invite public to subscribe to its shares and to borrowing by issue of debentures;- Option to list at stock exchanges.

Registration of any company is regulated by the **Registrar of Companies (RoC)** whose offices are situated in various states of India. Formalities involved in incorporation of a company are: selection of name and drafting of Memorandum of Association (object and purpose of such a incorporation) and Articles of Association (Internal regulations of projected company). Memorandum and Articles of Association are affixed with requisite stamp duty applicable in state and a declaration by an Advocate, a Company Secretary or a Chartered Accountant shall be filed stating that all requirements in respect of registration of company have been complied with. On payment of requisite fees, the RoC, after scrutinizing the documents and papers, will issue a 'certificate of incorporation'. The date of certificate of incorporation is the date on which the company will come into existence as a separate legal entity.

The foreign Companies can set up a subsidiary Indian company in the form of private company. The subsidiary Indian Company is treated as domestic company for the tax purpose. The subsidiary company offer much flexibility in operation as comparing to branch office, liaison office or project office.

Important Note:

The private company incorporated in India being 100% subsidiary of a foreign public limited company shall be treated as private company and enjoy the benefits and privileges available to Private Companies.

❖ Acquisition of existing local company and converting it to wholly owned subsidiary of foreign company

Based on the provisions of the Companies Act, 1956, Securities and Exchange Board of India Act/Regulations (applicable only for listed companies), Foreign Direct Investment Policy, a foreign company can enter into JVs and acquire shareholding for the management control of Indian entity depending on the level of holding: Portfolio ventures (less than 25%), Minority ventures (more than 25% and less than 50%), Consensus ventures (50%), Majority ventures (more than 50% and less than 75%) and Controlling ventures (more than 75%).

Establishing a Joint-Venture (JV)

Foreign company can establish full fledged activities through vehicle of Joint Venture with Indian company. Indian government has liberal policies to welcome foreign direct investment in manufacturing and service sector. Joint Venture can be in multiple forms: -

- a. Through new company incorporated to carry out proposed activities.
- b. Through existing company expanding activities. In such case additional equity funds are contributed by foreign company.
- c. Acquisition of existing local company and converting it to wholly owned subsidiary of foreign company.

❖ Entrance as a foreign entity

The Foreign Companies can establish place of business in India without incorporating an entity in India

Foreign Entities establishing a place of business in India shall, within 30 days of the establishment of the place of business, deliver certified copies of all the necessary documents and shall notify their place of business in India to Registrar of Companies. For this purpose, they are required to obtain a specific approval from the Reserve Bank of India.

A foreign company can establish its business in India in any of following way:

Liaison Office: A foreign company can set up a liaison office as a place of business to act as a channel of communication between the principal place of business or head office and entity in India but does not undertake any commercial / trading / industrial activity directly or indirectly. The liaison office is established with the approval of Reserve Bank of India. The Companies desirous to open of liaison office in India should make an application in Form FNC-1 with other required documents to Reserve bank of India. The initial permission to set up liaison office is given for 3 years which may extended from time to time.

Branch Office: Foreign companies other than a banking company engaged in manufacturing or trading may open branches in India with the approval of Reserve Bank of India.

Project Office: Foreign companies may establish a project office in India to represent the interest of foreign companies executing projects in India. The Reserve Bank has granted general permission to foreign entities for setting up project offices in India subject to compliance of conditions stipulated.

Note: RBI has granted general permission under Foreign Exchange and Management Act, 1999 to Insurance Companies incorporated outside India for establishing branch or liaison office in India, who have obtained prior approval from the Insurance Regulatory and Development Authority (IRDA).

Partnership and sole proprietorship concern in india:

The foreign residents (Except for NRIs and PIOs) are not allowed to set up Partnership and sole proprietorship concern in India.

❖ Foreign Technology Agreements

For promoting technological capabilities in Indian industry, acquisition of foreign technology is encouraged through foreign technology collaboration agreements. Induction of know-how through such new agreements is permitted either through automatic route or with prior approval from the Government.

Under the automatic route, remittance of Payment of royalty up to 8% for exports and 5% for domestic sales and payment of lump sum not exceeding USD 2 million is allowed. The proposals, which do not satisfy the parameters of automatic route, require clearance from the Government of India.

Payment of Royalty to parent company for use of Brand name and Trademarks:

Payment of royalty up to 2% for exports and 1% for domestic sales is allowed under automatic route for use of brand name and trademarks..

Remittance of Profit or Surplus:

A person resident outside India permitted by Reserve Bank of India to establish a branch or project office in India may remit outside India the profit or surplus net after applicable Indian taxes.

Managing a business entity in India

Once an investor has entered the Indian market, it shall be liable to comply with applicable Indian legislations. The paragraphs below describe the main components of an investor's liabilities.

❖ Trade regulation

Simplification of export-import regulations has been a highlight of India's reform process, especially after joining the WTO (1995). Barring a short list of goods (on the grounds of defence security, hygiene, conservation of biodiversity or sensitivities of domestic self-sufficiency), all other products are freely allowed for imports and exports, including for trading purposes.

❖ Labour laws

India has an extensively regulated system for protecting the interest of industrial workers. The Factories Act, 1948 contain suitable provisions for providing a high protection from industrial and occupational hazards, a ceiling of 48 hours week for adult workers and minimum standards of safety and welfare services. The Minimum Wages Act, 1948 empowers the Government to fix minimum wages for employees, especially for the ones working in industry. India's current minimum wages are Rs. 125/- per day. Lay off, retrenchment and closures are regulated under the Industrial Disputes Act, 1947.

❖ Corporate administration

Under the Companies Act, 1956, public companies are required to appoint three directors, and two directors for private ones. A director need not own any qualifying shares. At least one-third of the directors are liable to retire every year at the Annual General Meeting and those retiring directors could be reappointed at the same Annual General Meeting. Every public company with a paid-up capital of Rs. 50 million or more is required to appoint a Managing Director/ Whole time Director/Manager.

The financial year of a company starts on 1st April of the year and ends on 31st March of the next year. Every company is required to present a true and fair view of the state of its affair of the company in its financial accounts with respect to receipt and expenditure, sales and purchases, assets and liabilities. Before the accounts are presented at the Annual General Meeting, have to be audited by the statutory auditor. Every company with a paid-up share capital of Rs. 20 million is obliged to appoint a full-time qualified Company Secretary.

The Companies proposing to list or listed at stock exchanges are required to comply SEBIs Act/ Regulation and listing agreement of respective stock exchanges.

❖ Intellectual property protection

After 1995, India started to amend its legislation in compliance with the Agreement on Trade aspects of Intellectual Property Rights (TRIPS). India was required to comply and to implement WTO-standard intellectual property rights (IPR) protection laws by 2005. Now, India has extended IPR to all convention countries on a Most Favoured Nation (MFN) basis.

Thus, IPRs in India are duly protected and effectively enforced.

❖ Indian taxation

After onset of liberalisation process in the country, the Tax structure of the country has been rationalised keeping in view the national priorities and also adopting global taxation practice adopted in other countries. The provisions of Income tax are contained in Indian Income tax Act, 1961. The Income tax Act contains the provisions for determination of taxable Income, tax liability, procedure for assessment, appeal, penalties and prosecution. Each year finance bill is presented in Parliament; it declares the financial proposals for the next financial year and accordingly act is amended.

Taxes in India are of two types, Direct Tax and Indirect Tax.

- Direct Tax, like income tax, fringe benefit tax, minimum alternative tax (MAT) wealth tax, etc. are those whose burden falls directly on the taxpayer.
- The indirect taxes, like Excise, Customs, Sales Tax, Service Tax, VAT, etc. the burden of taxes is passed to the third party.

Direct Taxes:

Income tax

The Income Tax Act, 1961 provides for assessment of Individuals, Partnership firms, Association of persons, body of Individuals, local authority and Companies. Income Tax is levied on all income other than agricultural income and collected by the central government and shared with the states. Tax liabilities are calculated on income accrued or received during the relevant financial year. Taxable income includes income from salary, House property, business or profession, capital gains, and other sources (dividends, interests, etc.).

The total income of an individual is determined on the basis of his residential status in India.

Residence Rules

An individual is treated as resident in the previous year if he fulfils any of the following conditions.

- A) Present in India for 182 days or more during the previous year or
 - B) For more than 60 days during the year and 365 days during the preceding four years.
- Individuals fulfilling neither of these conditions are non-residents. (The rules are slightly more liberal for Indian citizens residing abroad or leaving India for employment abroad.)

A resident who was not present in India for 730 days during the preceding seven years or who was non-resident in nine out of ten preceding years will be treated as not ordinarily resident. In effect, a newcomer to India remains not ordinarily resident.

For tax purposes, an individual may be resident, non-resident or not ordinarily resident.

Residents and Non-Resident Indians

Residents are taxed on worldwide income. Non-residents are taxed only on income that is received in India or arises or is deemed to arise in India. A person not ordinarily resident is taxed like a non-resident but is also liable to tax on income accruing abroad if it is from a business controlled in or a profession set up in India.

Taxability of individuals is summarised in the table below

Status	Indian Income Received/Accrued or deemed to be accrued in India.	Foreign Income
Resident and ordinarily resident	Taxable	Taxable
Resident but not ordinary resident	Taxable	Not Taxable
Non-Resident	Taxable	Not Taxable

Individuals:

Income Slabs	Rate of tax for the F.Y. 2007-2008
Upto Rs. 110000	Nil
From Rs. 110001 to 150000	10%
From Rs. 150001 to 250000	20%
Above Rs. 250000	30%

Surcharge:

A surcharge of 10% on income tax is applicable if income exceeds Rs. 10,00,000 in the previous year.

Apart from this there is levy of 2% Education Cess on Income Tax and 1% Secondary and higher education cess of income tax.

Repatriation of earning:

A foreign national is allowed to repatriate 75% of his net after tax earning subject to his employment is approved by Government and exchange control authorities. If employment is for short duration, such approvals are not necessary provided the remittance is within approved limits.

Corporate Income tax

A company has been defined as a juristic person having an independent and separate legal entity from its shareholders. Income of the company is computed and assessed separately in the hands of the company. However the income of the company, which is distributed to its shareholders as dividend is assessed in their individual hands. Such distribution of income is not treated as an expenditure in the hands of company. It is an appropriation of the profits of the company income.

Residency of a company

The taxability of a company's income depends on its residential status. a company said to be resident in India in the relevant previous year if

1. it is an Indian company registered under the provisions of the Indian company's act 1956 or..
2. if it is not an Indian company then the control and management of its affairs is wholly situated in India.

A company shall be regarded as a non-resident in India if it is neither an Indian company and partial control and management of its affairs situated outside India.

Electronic filing of company returns is mandatory from 1.4.2006.

Assessing taxable income

In ascertaining taxable income, all expenditure incurred for business purposes are deductible. The general principal for allowing deductions are:

1. Expenditure should be incurred during the previous year
2. Expenditure should be incurred for the purpose of business

The deductions on account of rent, rates, taxes, depreciation, insurance premiums on employee/stock, interest, legal expenses and all business expenditure, are expressly allowed as a deduction under the head Business Incomes.

However no deduction is allowed for the expense incurred on discontinued business, expense incurred before setting up of business and for provisions/reserves for any contingencies or anticipasies losses etc.

Indian companies are taxable in India on their worldwide income. Foreign companies are taxable on income that arises out of their Indian operations, or, in certain cases, income that is deemed to arise in India. Royalty, interest, gains from sale of capital assets located in India (including gains from sale of shares in an Indian company), dividends from Indian companies and fees for technical services are all treated as income arising in India.

Description	Existing Rate(%)
Domestic Company*	
Regular Tax	30
Foreign Company#	
Regular Tax	40

* Apart from this there is levy of 2% Education Cess on Income Tax and 1% Secondary and higher education cess of income tax.

* If total income exceeds Rs. 10 million, a surcharge of 10% on Income tax is applicable.

If total income exceeds Rs. 10 million, a surcharge of 2.5% on Income tax is applicable

Fringe Benefit Tax

Fringe Benefit Tax is a tax payable by companies on certain privileges, services, facilities, amenities (use of hotels, boarding and lodging facilities, use of health club and other club facilities, festival celebrations, Gifts, scholarship, tour and travel etc.) provided or deemed to have been provided to employees shall be chargeable in the hand of employers.

Wealth tax

Wealth tax is essentially a direct tax and is levied on the net wealth of the corresponding valuation date of every individual, Hindu Undivided Family and company, @1% of the amount by which net wealth exceeds Rs.1.5 Million.

Minimum Alternate Tax (MAT)

In case of a company, if the Income tax payable on total income as computed under the Income Tax Act, is less than 10% of book profit, such book profit shall be deemed to be income of the assessee and tax payable shall be at a rate of 10% on such book profit

Indirect Taxes:

Excise duties

Excise duty is imposed on the manufacturer of excisable products and is levied on a wide variety of commodities manufactured in India. Central excise revenue is the biggest single source of revenue for the Government of India. The Union Government tries to achieve different socio-economic objectives by making suitable adjustments in the scope and quantum of levy of Central Excise duty. The scheme of Central Excise levy is suitably adapted and modified to serve different purposes of price control, sufficient supply of essential commodities, industrial growth, promotion of small scale industries. The excise duties are imposed by Central Excise Act, 1944 and Central Excise Tariff Act, 1985 and Acts are administered by the Central Board of Excise and Customs under Ministry of Finance, Government of India.

Customs duties

Customs duties are levied under Customs Act, 1962 on commodities imported into India. The rates are prescribed in the Customs Tariff Act, 1975 and are revised from time to time by the annual Finance Act or by various notifications issued by Government of India. In order to give a broad guide as to classification of goods for the purpose of duty liability, the central Board of Excises Customs (CBEC) bring out periodically a book called the "Indian Customs Tariff Guide" which contains various tariff rulings issued by the CBEC. For a person who do not actually import or export goods customs has relevance in so far as they bring any baggage from abroad. The Acts are administered by the Central Board of Excise and customs under Ministry of Finance, Government of India.

Service tax

The service tax has been levied on taxable services at the rate of 12.36% on the value of services rendered. Taxable service includes any taxable service provided or to be provided in India for cash, deferred payment or any other valuable consideration.

Specific provisions have also been introduced to levy service tax on taxable services provided by a person located outside India to a person in India. The services provided outside the limits of Indian territorial water are also taxable. Service tax is levied under the Finance Act 1994 and administered by Central Excise Department.

Value added tax (VAT)/Sales tax

Sales tax is levied on the sale of moveable goods. Most Indian States have replaced the former sales tax regime, prevailing for more than 5 decades, with VAT from April 1, 2005. VAT is imposed on goods only and not services and is multi-point levy on each of the entities in the supply chain with the facility of set-off against input tax. Only the value added on the hand of each of the entities is subject to tax.

VAT levy will be administered by the Value Added Tax Act and the rules made there-under:

VAT can be computed by using one of the three methods detailed below:

- the subtraction method: the tax rate is applied to the difference between the value of output and the cost of input.
- the addition method: the value added is computed by adding all the payments that is payable to the factors of production.
- tax credit method: this entails set-off of the tax paid on inputs from tax collected on sales.

Advance ruling on income tax liability:

Non-resident can obtain an ADVANCE RULING ON INCOME TAX LIABILITY on a specific investment plan from Authority on Advance Ruling (AAR). The application is to be submitted in quadruplicate in prescribed format along with fees of Rs. 2500/- either in person, by authorised representative or by registered post to the secretary of Authority. The Advance ruling pronounced by the Authority on Advance Ruling (AAR) shall be binding on applicant and Income Tax authorities in a particular transaction.

Visa Requirement

Foreign nationals entering into India are required to carry a valid passport/travel documents and a valid visa. Visas for the purpose of tourism, entry, transit, conference, business and employment etc. are issued by Indian Embassies and Consulates abroad, are normally granted for three of six months. Business visa may be issued for upto 5 years, with multiple entry provision. It can also be renewed/extended within India if the applicant so desires. Foreign nationals who wish to work in India must obtain a Residential Permit from the Foreigners Regional Registration Office (FRRO), that are located in all major cities, or in the case of smaller cities, from the principal police station.

A foreign national, holding a visa –except a tourist visa– valid for a period exceeding 180 days, is required to be registered with the FRRO within 15 days of arrival in India. Change of purpose or type of visa is not allowed. The visa other than employment, student and entry are not normally considered for extension.

The transfer of residence scheme applies to foreign nationals visiting India for long durations. Under this scheme, foreign nationals can import certain personal effects without paying customs duty. A bank guarantee has to be provided for this purpose, which is returnable after the individual has stayed in India for a year. To avail this scheme, goods have to be shipped two months before entry into India or one month after entry and goods imported under this scheme should be owned by importer or his family for at least one year.

❖ Dispute resolution

Courts

India has a developed and independent mechanism of judiciary with Supreme Court at the apex level, various High Courts in respective states and district courts at the lower level, Indian Legal System is one of the best in the world and it is not as expensive compared to other countries. Foreign Investors can take expert help from leading law firms like Surana & Surana International Attorneys operating within the country and avail any of the redressal mechanism for sorting out disputes/grievances.

Alternative Dispute Resolution

Due to the complex adjudication process in courts, foreign investors are increasingly using alternative dispute settlement mechanism as their principal recourse in commercial disputes. The Arbitration and Conciliation Act, 1996 based on the UNCITRAL model, is very efficient, practical and suited for quick resolution of domestic as well as international disputes.

❖ Useful addresses

<p>SECURITIES AND EXCHANGE BOARD OF INDIA Head Office : Plot No.C4-A,'G' Block,Bandra Kurla Complex,Bandra(East), Mumbai 400051 Tel : +91-22-26449000 / 40459000 Fax : +91-22-26449016-20 / 40459016-20 E-mail : sebi@sebi.gov.in</p>	<p>Insurance Regulatory and Development Authority Head Office 3rd Floor, Parisrama Bhavan, Basheer Bagh HYDERABAD 500 004 Andhra Pradesh (INDIA) Ph: (040) 23381100 Fax: (040) 6682 3334 Email:irda@irda.gov.in</p>
<p>MINISTRY OF CORPORATE AFFAIRS 'A' WING, SHASTRI BHAWAN RAJENDRA PRASAD ROAD, NEW DELHI - 110 001 PHONE : 011 - 23384660, 23384470, 23389403 EMAIL : Manoj.arora@mca.gov.in Pawan.kumar@mca.gov.in oandm.dca@sb.nic.in</p>	<p>The Associated Chambers of Commerce and Industry of India ASSOCHAM Corporate Office, 1, Community Centre Zamrudpur Kailash Colony, New Delhi – 110 048 Tel: 46550555 (Hunting Line) Fax: 46536481/46536482 46536497/46536498 E-mail: assocham@nic.in</p>
<p>Software Technology Parks of India Tower#7, Floor#6, International Infotech Park, Vashi Railway Station-cum-Commercial Complex, Vashi, Navi Mumbai-400 705, India. EPABX : +91-22-2781 2102/03/04 Fax: +91-22-2781 2034 Website:www.mumbai.stpi.in E-mail :stpinfo@mumbai.stpi.in</p>	<p>Federation of Indian Chambers of Commerce and Industry(FICCI) Federation House Tansen Marg New Delhi 110001 Tel.: 011-23738760-70 Fax: 011-23721504, 23320714 E-mail: ficci@ficci.com</p>
<p>Foreign Investment Promotion Board, Department of Economic Affairs, North Block, New Delhi 100 001, Website: finmin.nic.in</p>	<p>Confederation of Indian Industry, CII Mantosh Sondhi Centre, 23, Institutional Area, Lodi Road, New Delhi 110 003 ☎: +9111 2306 1222 - 📠 +9111 306 626 Website: ciionline.org</p>
<p>Department of Industrial Policy &Promotion, Ministry of Commerce & Industry, Udyog Bhawan,. ☎: +9111 2464 9994 - 📠 +9111 2462 6149 website: dipp.gov.in</p>	<p>Reserve Bank of India Central Office Shaheed Bhagat Singh Marg Mumbai 400 001 Ph: +91-22-2266 1602 Website: www.rbi.org.in</p>