



# SETTING UP

Business presence in India

# CORPORATE TAX

## CORPORATE TAX RATE REMAINS UNCHANGED i.e.

COMPANY	RATE (%)
Domestic <sup>1</sup>	
❖ New manufacturing enterprise	25 <sup>2</sup>
❖ Others	30
Foreign	40 <sup>3</sup>

<sup>1</sup> Surcharge at 7% and 12% where income exceeds ₹10 mn and ₹100 mn respectively

<sup>2</sup> The benefit of lower rate of tax is applicable to new manufacturing companies with turnover or gross receipts up to Rs. 4 billion during financial year 2021-22

<sup>3</sup> Surcharge remains at 2% and 5% where income exceeds ₹10 mn and ₹100 mn respectively

## CONCESSIONAL TAX SCHEME

COMPANY	RATE (%)
Domestic Company and Cooperative Society <sup>1</sup>	
❖ New Manufacturing enterprise <sup>2</sup>	15%
❖ New Manufacturing cooperative society <sup>3</sup>	15%
❖ Others	22%

<sup>1</sup> Surcharge at 10% and education cess at 4% is applicable

<sup>2</sup> Benefit extended to companies registered on or after October 1, 2019 and commencing manufacturing (including electricity generation) on or before March 31, 2024 with certain conditions

<sup>3</sup> Benefit applicable to manufacturing cooperative society set up on or after April 01, 2023 & commencing manufacturing or production before March 31, 2024 with certain conditions.

## CORPORATE TAX

Businesses need to determine their annual tax payment and ensure deposit under an installment plan referred as Advance Tax by June 15th (15%), September 15th (45%), December 15th (75%) and March 15th (100%).

## TRANSFER PRICING (TP)

Businesses having cross border dealing with related concerns fall within the ambit of Indian TP regulations, which requires maintenance of prescribed documentation and certification by an Indian firm of Chartered Accountants.

## DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

India has a network of DTAA with over 85 countries.

## WITHHOLDING TAX

Businesses, including Liaison Office, need to withhold tax on specified payments viz. contractual, professional, rental, etc.

## TAX AUDIT

Threshold of tax audit for business is ₹100 million, where aggregate cash receipts / payments do not exceed 5 per cent of such gross receipts / payments.

PAYROLL TAX >>		
NEW REGIME <sup>1</sup>		
INCOME RANGE (₹)		RATE (%)
FROM	TO	
Upto 250,000	Upto 300,000	Nil
250,001-500,000	300,001-600,000	5
500,001-750,000	600,001-900,000 <sup>2</sup>	10
750,001-1,000,000	900,001-1,200,000	15
1,000,001-1,250,000	1,200,001-1,500,000	20
1,250,001-1,500,000	-	25
1,500,001 & above <sup>3</sup>	1,500,001 & above <sup>3</sup>	30

<sup>1</sup> The new regime is extended to association of persons (other than a co-operative society), body of individuals and artificial juridical persons. Deductions, exemptions and carried forward losses restricted, with certain conditions.

<sup>2</sup> Tax rebate limit enhanced from 0.5 to 0.7 million under the new regime.

<sup>3</sup> Surcharge remains unchanged at 10 per cent on income exceeding 5 to 10 million; stands at 15 per cent on income exceeding 10 to 20 million; stands at 25 per cent on income exceeding 20 to 50 million; stands at 37 per cent on income exceeding 50 million. However, surcharge is now restricted to 25 per cent under the new regime. Further, surcharge shall not exceed 15 per cent on dividends, STT paid capital gains and non-STT paid long term capital gains.

# INDIRECT TAX

An employer is required to contribute and comply with a social security tax namely Provident Fund. There is also an Employee State Insurance cost. Both of these primarily focus on blue collared staff. Foreign nationals deputed to work in India will be taxed on the basis of tax residential status, which is linked to the number of days stayed in India. An employment/business visa is necessary, as is registration with the Foreigners Regional Registration Officer (FRRO). There are certain state specific regulations e.g. Professional Tax and Shop and Establishment Act, which prevail in Indian states like Karnataka, Maharashtra, Tamil Nadu etc.

## TAX ON GOODS AND SERVICES

Goods & Service Tax is an indirect tax, applicable throughout India, which replaced multiple cascading taxes levied by Central and State Government. GST is applicable from July 1, 2017 with taxes being 0%, 5%, 12%, 18% and 28%.

## COMPANIES & LLP

Two main forms - Private Limited (PVT) and Public Limited (LTD). PVT is the most common form for an international subsidiary. Entrepreneurs and professionals intending to organise a formal structure with defined limited exposure also prefer Limited Liability Partnership (LLP).

Audited accounts are filed annually, on public record, with the Registrar of Companies (RoC), in a format set out under the Indian law and Indian Accounting Standards, within a set time scale. Companies also file an Annual Return which gives detail of shareholders and directors. Businesses are required to follow fiscal year i.e. April 1st to March 31st, for compliance under the Indian Income tax laws.

REGULATORY MATTER	DUE DATE
Corporate Law	
Board Meeting	Four meetings every year with a gap not exceeding 120 days between two such meetings
Annual General Meeting (AGM) (adoption of financials)	Within 6 months of end of the financial year
Annual Accounts with ROC	Within 30 days from conclusion of AGM
TAX	
Corporate Tax Return	October 31st/ November 30th
Tax Audit Report	September 30th/ October 31st
Transfer Pricing Report	October 31st
TDS Returns (Tax Withholding)	Quarterly
Individual Tax Return	July 31st
GST Return* - Turnover > ₹50 million - Turnover < ₹50 million	Monthly Quarterly/Monthly
COMPLIANCE	
Deposit of TDS	7th of every month
Deposit of GST - Turnover > ₹50 million) - Turnover > ₹50 million)	20th of every month 22nd/ 24th/ 25th of every month/ Quarter**

\*It includes GSTR 1 and GSTR 3B   \*\*Differs according to State

# REGULATORY COMPLIANCE

## RESTRICTED SECTORS (FDI DISALLOWED)

<ul style="list-style-type: none"><li>• Gambling and Betting</li><li>• Lottery Business</li><li>• Chit funds</li><li>• Nidhi Company</li><li>• Trading in Transferable Development Rights (TDRs)</li></ul>	<ul style="list-style-type: none"><li>• Real Estate Business or construction of farm house</li><li>• Manufacture of cigars, cigarettes etc.</li><li>• Railways</li><li>• Atomic Energy</li><li>• Activities/sectors not open to private sector investment</li></ul>
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## SECTORAL CAPS ON FDI IN CERTAIN INDUSTRIES (ILLUSTRATIVE LIST)

<ul style="list-style-type: none"><li>• Defence automatic (Govt approval needed beyond 74%)</li><li>• Insurance (Govt approval needed beyond 74%)</li><li>• Telecommunication</li><li>• Airlines (Govt approval needed beyond 49%)</li></ul>	<ul style="list-style-type: none"><li>• Agriculture (100%)</li><li>• Single brand retail trading (100%)</li><li>• Multi Brand Retail Trading (51%)</li><li>• Print Media (Govt approval needed beyond 26%)</li></ul>
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- **In case of a LTD company, where paid up capital exceeds INR 100 million (USD 1,600,000 approx)**

Appointment of a Key Managerial Personnel (i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) Company secretary; and (iii) Chief Financial Officer) mandatory

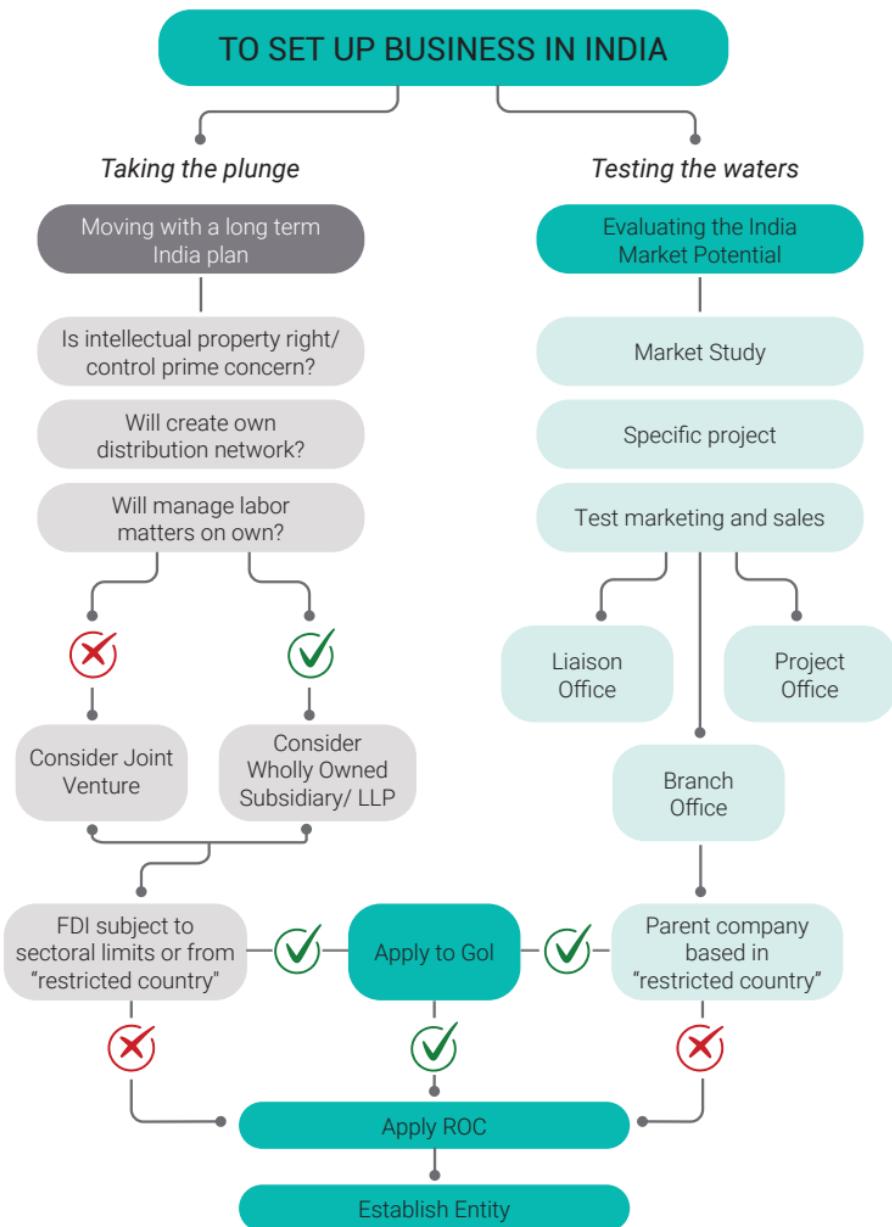
- **Labour laws**

- 29 central labour laws merged into 4 comprehensive yet simplified labour codes namely Code on Wages 2019, Industrial Relations Code 2020, Social Security Code and The Occupation Safety, Health and Working Conditions Code 2020.

PARTICULARS	CODE ON WAGES 2019	THE OCCUPATIONAL SAFETY, HEALTH & WORKING CONDITIONS CODE 2020	INDUSTRIAL RELATIONS CODE 2020	SOCIAL SECURITY CODE 2020
Old laws subsumed	4 laws	13 laws	3 laws	9 laws
Description	Payment of Wages, Bonus, Minimum Wage	Provision for Safety and Health measures, working conditions	Industrial Disputes and Trade Union, Lay-off, Lock-out, Closure, Retrenchment	Insurance, Gratuity, Provident Fund

- Dual criteria of investment and turnover introduced for Micro, Small and Medium Enterprises (MSMEs). Enterprises crossing the ceiling limit either in investment or turnover, shall automatically be placed in higher classification.

# INDIA ENTRY STRATEGY



A foreign enterprise can consider the following routes for doing business in India

Corporate Entity
Joint Venture with a partner (JV)
Wholly Owned Subsidiary (WOS)
Limited Liability Partnership (LLP)

Non-Corporate Entity
Project Office (PO)
Liaison Office (LO)
Branch Office (BO)

# INDIA SUBSIDIARY

OR BRANCH OFFICE OR...

	WHOLLY OWNED SUBSIDIARY	JOINT VENTURE COMPANY	LIAISON OFFICE
Characteristic	Company with entire share capital owned by the foreign investor	Company where two or more parties jointly hold the share capital	Representative office with no activities in India
Ownership	Foreign company directly or through holding company structures	Joint ownership with other partners	Is part of overseas company
Control	Controlled by its Board of Directors	Joint Control determined as per shareholders agreement	Controlled by
Corporate Liability	Parent not generally liable. Liability is limited to share capital of subsidiary unless Permanent Establishment is determined	Liability of investors limited to share holding	Parent is fully liable
Set-up Requirements	Prior Approval/ automatic route	Prior Approval/ automatic route	Prior Approval / AD Bank
On-going legal obligations	Appoint Directors (1 director to be resident in India)		
	Filing of incorporation documents		
	Issue shares to parent	Issue of fresh shares	
Annual Return to RoC, I-T	Maintain books of accounts & secretarial records		May be required
			Register changes in RoC
Not required			Annual accounts
Closure	Application to RoC & NCLT		Application to RoC
Repatriation of money	After NCLT order		After RBI permission

\* NCLT - National Company Law Tribunal | \* RBI - Reserve Bank of India

\* RoC - Registrar of Companies

\* AD Bank - Authorised Dealer Bank

	PROJECT OFFICE	BRANCH OFFICE	Limited Liability partnership			
Temporary site office for specific project only	Commercial activities on behalf of the Head Office	Corporate structure with benefits of Limited Liability & flexibility of partnership				
Is part of overseas company	Is part of overseas company	Foreign owned LLP are permitted with prior government approval				
Controlled by Parent	Controlled by Parent	Controlled by Partners				
Parent is fully liable	Parent is fully liable	Liability of each Partner is limited to agreed contribution				
Automatic route/ Prior approval from RBI / AD Bank	Prior Approval from RBI / AD Bank	Approval / Automatic Route				
Indian Office Address						
Intimate RoC	LLP Agreement					
	Filing of incorporation documents					
	2 Persons nominated (1 partner to be resident in India)					
Maintain books of accounts	Maintain books of accounts					
Filing of constitution/ directors/ shareholders						
Annual Audit						
Annual Return to RoC, I-T and Police	Annual Return to RoC, I-T					
Annual accounts of parent company	Not required					
Application to RBI, ROC & I-T	Application to RoC & NCLT					
Submission subject to tax clearance	After NCLT order					

Prepared by ASA Corporate Catalyst India

\* This document has been prepared as a service to the clients. We recommend that you seek professional advise prior to initiating action on specific issues.



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