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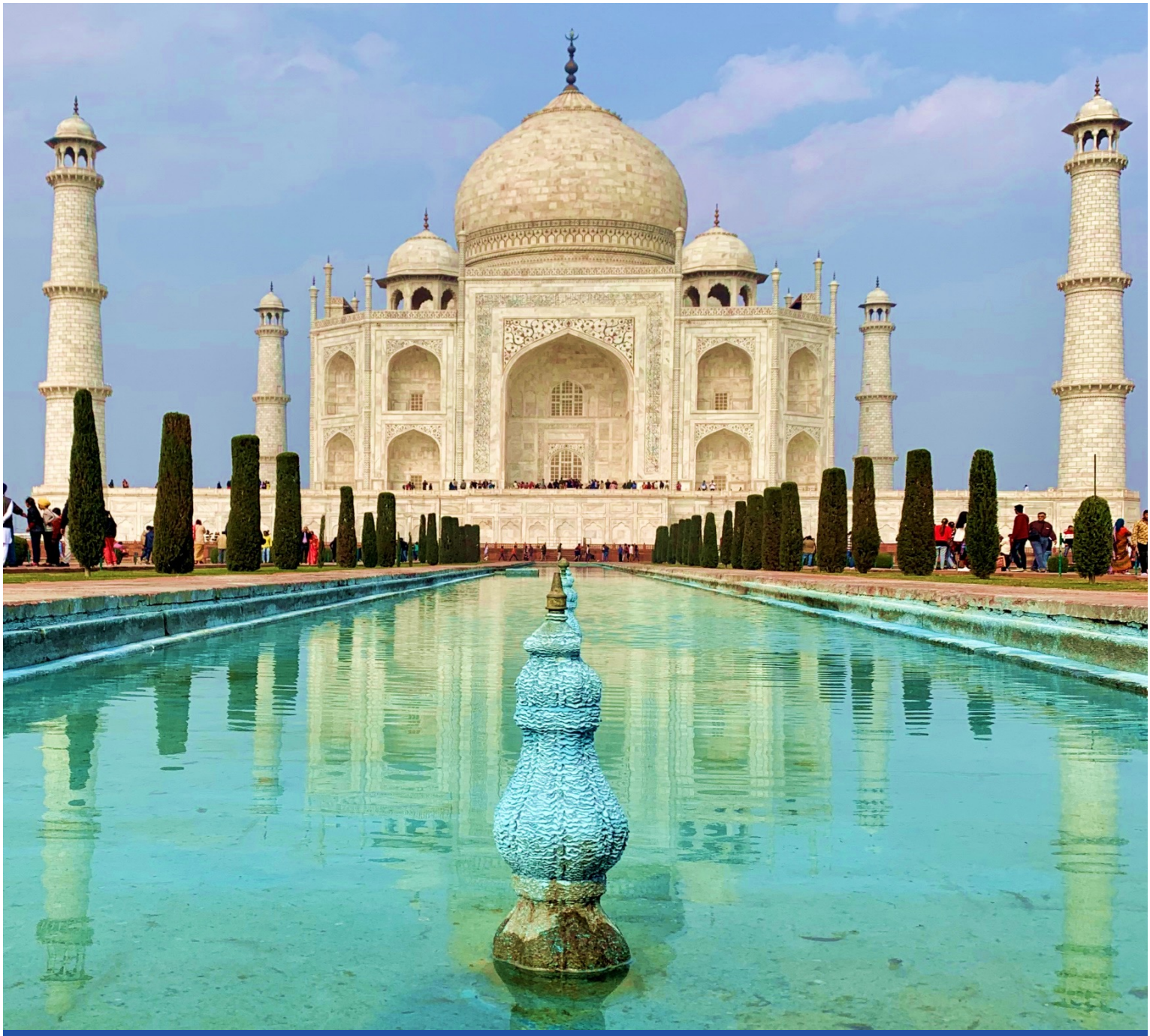

A Guide to Doing Business in India

A member of
mgiworldwide

2023

Applicable for F.Y. 2022-23

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01 Executive Summary

"This is the best time to invest in India", PM Narendra Modi said in a special address to world leaders at the World Economic Forum's WEF 'Davos Agenda' Summit held in May 2022.

India will remain one of the fastest growing economies in the world in 2022 as the government continues to implement policy reforms and intervene to strengthen economic infrastructure.

Make in India, the flagship program of the Government of India (GoI) that aspires to facilitate investment, foster innovation, enhance skill development, and build best in-class manufacturing infrastructure, completed its 8 years of path-breaking reforms in September 2022.The program is transforming the country into a leading global manufacturing and investment destination.

To strengthen Make in India initiative, several other measures have been taken by the GoI. The reform measures include amendments to laws, liberalization of guidelines and regulations to reduce compliance burden and enhance the ease of doing business in India.

Deep reforms like the launch of PM Gati Shakti in October 2021, a National Master Plan for Multi Modal Connectivity, essentially a digital platform to bring 16 Ministries, including Railways and Roadways, together for integrated planning and coordinated implementation of infrastructure connectivity projects will surely attract foreign investors.

Production Linked Incentive (PLI) scheme across 14 key manufacturing sectors, was launched in 2020-21 as a big boost to Make in India initiative.

Budget 2022, with a view to boosting exports, is looking at replacing the Special Economic Zones Act with a new legislation That will enable the states to become partners in Development of Enterprise and Service Hubs (DESH).

India is ranked 63rd among 190 economies in the ease of doing business, according to the latest World Bank annual ratings.(4)

Snapshot of India

- Seventh-largest country by area with a total area of 3.29 million sq. km.(1)
- Second-most populous country with over 1.41 billion people.(1)
- Indian GDP at Current Prices for FY 2022 is US $ 3.2 trillion.(2)
- GDP Growth rate for FY 2022 is 8.7%.(2)
- According to UNFPA estimates, 68 per cent of India's population is between 15-64 years old in 2022.(3)
- Huge domestic market
- Among the 10 countries that have improved the most on "Ease of Doing Business" (World Bank)(4)
- Literacy rate : 74%(1)
- Labor Force : 471.3 million [2021]

02 Socio-economy

India is a federal union comprising 28 states and 8 union territories, for a total of 36 entities. India is home to 1.41 billion people. It has the world's largest youth population. Indian population is equivalent to 17.71% of the total world population.

India has become the fifth-largest economy in the world, ranking behind US, China, Japan and Germany.

India's renewable energy capacity has increased by 250 per cent in last six years. India has become one of the top five countries in the world in terms of installed renewable energy capacity.

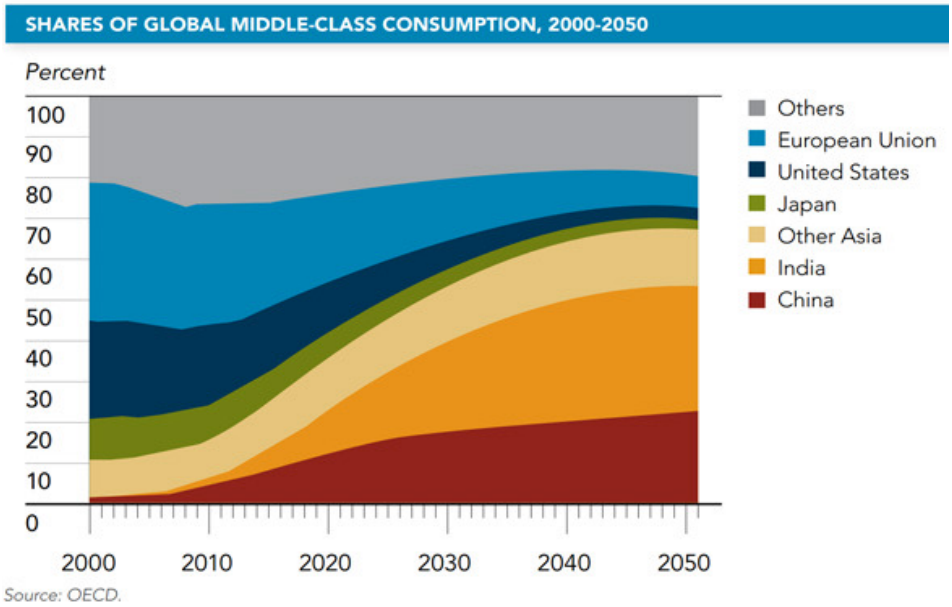
·The country has entered the transition period of advancing in the population age structure which could last until 2055.
The top five attractive factors of India's economy for business are - a skilled workforce, cost competitiveness, dynamism of the economy, high educational level and open and positive attitudes.

Road ahead

- The country's nominal GDP is forecasted to rise to USD 8.4 trillion by 2030, becoming one of the fastest growing economies.
- India has been taking initiatives towards net zero targets to reduce carbon emissions. There are tighter fuel efficiency norms across industries
- It is targeting to reduce carbon emissions by 33-35 per cent by 2030.

Why is India Important?

- Emergence of a middle class creates a "sweet spot" – rising incomes – increased spending.
- India has a large and healthy middle class, making it an attractive consumer market. Indeed, India is the world's largest market for manufactured goods and services, and ranks number 3 out of 141 economies for market size according to the WEF's Global Competitiveness Index.[5]
- That market is only anticipated to grow. The WEF estimates that India's total consumption expenditure will grow to $5.7-6 trillion by 2030.[5]
- India has become a powerhouse in terms of technology innovation.
- India has achieved a high macroeconomic stability ranking (with a score of 90 out of 100 and ranked 41 out of 141 economies) in the World Economic Forum's Global Competitiveness Index.[5]



03 Setting up business in India

India is an emerging market with wide scope and opportunities for both Indian and foreign investors. The Government of India offers entrepreneurial- friendly policies which makes access and growth of businesses in India easier.

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Types of Business Entities Permitted in India

1. Company
2. Limited Liability Partnership
3. Partnership Firm
4. Sole Proprietorship

A foreign entity may establish a business presence in India by:

- Opening a liaison office
- Branch office or project office
- Appointing a distributor or franchisee
- Commencing its own operations in India through a business entity registered in India
- Forming a joint venture with an Indian entity
- Acquiring an existing business in India.

Repatriation from an Indian Company

Foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after payment of taxes due.

The repatriation is allowed, provided the investment was made on a repatriation basis in terms of FDI/FEMA regulations, and is subject to any lock-in conditions that may be applicable under FDI/FEMA regulations.

Typical modes of repatriation in an Indian company:

1. Dividend:
   Profits earned by an Indian company can be repatriated as dividend, subject to availability of sufficient free reserves without the RBI's permission. The repatriation is also subject to compliance with other specified conditions.

2. Buy back:
   Buy back restricted up to 25% of the share capital and free reserves in a financial year subject to satisfaction of the prescribed conditions.

3. Capital reduction:
   National Company Law Tribunal (NCLT) driven process, subject to conditions prescribed under FDI regulations.

8 broad steps to starting a business in India:

1. Get the Certificate of Incorporation and Registration for your business entity.
2. Obtain a Permanent Account Number (PAN)
3. Obtain a Tax Account Number (TAN)
4. Register with the Office of Inspector, Shops and Establishment Act (State/Municipal)
5. Register for GST
6. Register for Profession Tax
7. Register with Employees' Provident Fund Organization (National)
8. Register for Medical Insurance

1. **Information Technology[6] – USD 1Tn digital economy by 2025**
   - Digital communication infrastructure
   - 5G services
   - Electronics system design & manufacturing
   - Global data center HUB

2. **Health Care[7]– USD 370Bn by 2025**
   - Super-specialty hospitals
   - Equipment and medical consumables
   - Diagnostic services and facilities

3. **ENR and Mobility - USD223.2 Bn by 2025**
   - Solar power
   - Battery storage
   - Clean energy
   - Renewable

4. **Aviation Sector[12] – USD30 Bn by 2024**
   - Regional connectivity scheme
   - Connectivity to Asian countries
   - Maintenance repair and overhaul
   - Aircraft OEM market

5. **Travel and Hospitality[13]– USD512 Bn by 2028**
   - E-Tourist VISA
   - Medical Tourism
   - Coastal Tourism

6. **Fintech [8]- USD1.3 Tn by 2025**
   - InsureTech
   - Neo banking
   - FintechSaaS

7. **Education[9] – USD 4 Bn by 2025**
   - Vocational training
   - Higher education institutes
   - Coaching institutes
   - EdTech

8. **Infrastructure[11] - USD1.4 Tn construction market by 2025**
   - Smart cities
   - Industrial corridors
   - Mega port
   - Commercial space
   - Railway stations

9. **Agriculture[10] - USD24 Bn Exports by 2025**
   - Digital agriculture
   - Farm mechanisation

04 Foreign Direct Investment

Foreign Direct Investment (FDI), in addition to being a key driver of economic growth, has been a significant non-debt financial resource for India's economic development.

Foreign corporations invest in India to benefit from the country's particular investment privileges such as tax breaks and comparatively lower salaries.

The government has recently made numerous efforts, including easing FDI regulations in various industries, PSUs, oil refineries, telecom and defense.

The total FDI inflows stood at US$ 81,973 million, a 10% increase over the previous financial year.

According to the World Investment Report 2022, India was ranked eighth among the world's major FDI recipients in 2020, up from ninth in 2019. Information and technology, telecommunication and automobile were the major receivers of FDI in FY22.[14]

Sectors/Routes for FDI in India

Entry routes

1. **100% FDI through Automatic route:**
   Under the Route, the foreign investor or the Indian company does not require any approval from RBI or Government of India for the investment.
2. **100% FDI through Government route:**
   Under the Route, prior to investment, approval from the Government of India is required. Proposals for foreign direct investment under Government route, are considered by respective Administrative Ministry/ Department.
3. **100% FDI through automatic and Government route.**

Prohibited

Prohibited sectors under FDI

- Gambling and Betting
- Lottery Business
- Activities/Sector not open to private investment e.g. Railway operations, Atomic energy
- Business of Chit-Fund
- Nidhi Company
- Real Estate Business or Construction of farmhouse
- Trading in transferable development rights
- Manufacturing of Tobacco, Cigar, Cheroots, Cigarillos, Cigarettes and other tobacco substitute

05 Legal & Taxation

Primary regulations under Indian laws:

I. Companies Act, 2013
It regulates the formation, functioning and winding up of companies. For companies registered in India after November 2019, having a share capital, it is necessary to obtain a commencement of business certificate before commencing any business or exercising the borrowing powers. The commencement of business certificate must be obtained within 180 days of incorporating a Company. Once registered the company has to meet various Half Yearly, Yearly and event-based compliances under the ROC.

II. Foreign Exchange Management Act, 1999
defines the procedures, formalities, dealings of all foreign exchange transactions in India.

III. Customs Duty - is a kind of indirect tax that is imposed on imported goods and services, and sometimes, on exported goods and services.

IV. Goods and Service Tax Act – GST, or Goods and Services Tax, is an indirect tax imposed on the supply of goods and services. It is a multi-stage, destination-oriented tax imposed on every value addition, replacing multiple indirect taxes, Including VAT, excise duty, services, etc. Good and services are included under a single domestic indirect taxation law for the whole of India. In this regime, tax is charged at each point of sale.

V. Stamp Duty - Stamp duty is levied and collected by the state government on all documented financial transactions, it varies from state to state.

VI. In addition, an Indian company would also be required to obtain common licenses and Registrations under the below laws, as applicable on a case-to-case basis:
- Indian trademark law & allied Intellectual property laws
- The Environment Protection Act, 1986
- RBI Regulations
- SEBI Act, 1992
- Limited Liability Partnership (LLP) Act, 2008
- Professional tax
- Competition Act,2002 etc.

VI. MSMED Act, 2006
Manufacturing and service industries and wholesale and retail trade are covered and eligible to apply for MSME registration.

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The following is the current MSME classification:

Criteria	Micro	Small	Med.
Investment & Turnover	≤ INR 1 Crore& ≤ INR 5 Crore	≤ INR 10 Crore& ≤ INR 50 Crore	≤ INR 50 Crore& ≤ INR 250 Crore

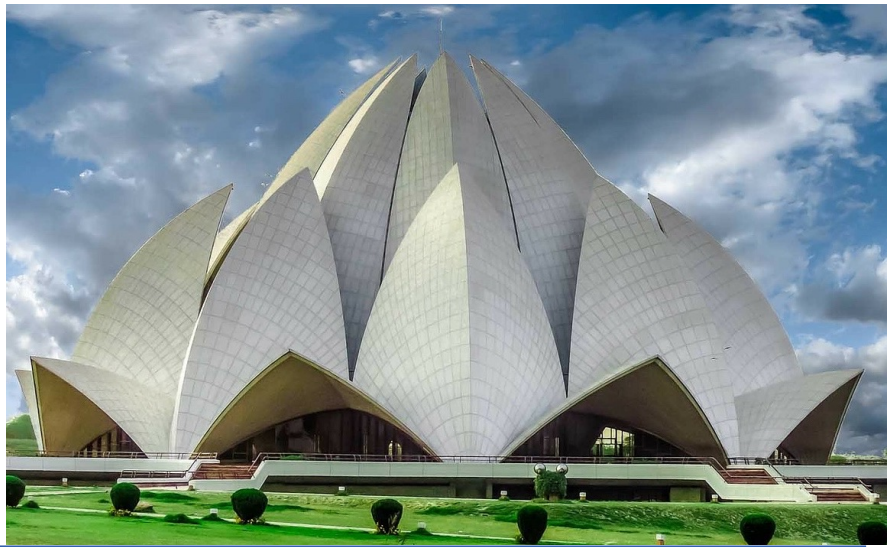
Some of the other added benefits of getting your MSME registered are:

a) Bank Loans (Collateral Free)
b) Subsidy on Patent Registration.
c) Overdraft Interest Rate Exemption.
d) Industrial Promotion Subsidy Eligibility
e) Protection against Payments (Delayed Payments)
f) Fewer Electricity Bills
g) ISO Certification Charges Reimbursement.

VIII. Income Tax Act, 1961: It provides for levy, administration, collection and recovery of Income Tax. The effective income tax rates are tabulated here below:

***The rates mentioned in the tax rate table below are exclusive of surcharge, which is levied on the basis of the quantum of taxable income earned during the year under consideration and education cess levied on the tax amount (inclusive of the surcharge). Surcharge rates range from 7% to 12% for domestic companies and 2% to 5% for foreign enterprises; the education cess rate is constant at 4% for all organizations.*

Type of Entity	Effective tax rate [up to 31st March, 2023]
New Manufacturing Domestic Company	15%
Concessional rate for companies without incentives	22%
Normal rate for companies	If Turnover in F.Y. 2019-20 < 400 crore, rate is 25%
	Otherwise, 30%
Limited Liability Partnerships	30%
Foreign Companies	40%
Individuals	Slab rates as prescribed



Relevant Compliances Under Income Tax Act, 1961

Income Tax Return

Income Tax Return (ITR) is a form which a person is supposed to submit to the Income Tax Department. It contains information about the person's income and the taxes to be paid on it during the year.

Information filed in ITR should pertain to a particular financial year, i.e., starting on 1st April and ending on 31st March of the next year. The Income Tax Department has prescribed 7 types of ITR forms - ITR-1, ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-7 and applicability of the form will depend on the nature and amount of income and the type of taxpayer.

TDS

TDS or withholding tax compliances are one of the most important and any non-compliance leads to several detriments (tax deduction not given for transactions made along with interest, fees and penalty being levied).

TDS is not applicable on all transactions, but only on specific ones and for amounts exceeding the threshold limits which are mentioned under the Income Tax Act (there are more than 30 specific payments).

TCS

In the case of TCS, the seller must collect an amount in addition to the sale value from the purchaser as tax and deposit the tax so collected with the government.

Like TDS, there are specific transactions to which TCS provisions are applicable which are mentioned under the Income Tax Act.

Equalization Levy

Equalization Levy was introduced in India in 2016, with the intention of taxing the digital transactions i.e., the income accruing to foreign e-commerce companies from India, it is a direct tax which is withheld at the time of payment by the service of specific services for payments made to Non-Resident of an aggregate amount of consideration exceeding Rs 1 lac.

Transfer pricing (TP)

Transfer pricing (TP) provisions in India are in line with the TP guidelines for multinational companies and tax administrators issued by the OECD, Transfer pricing compliance will be required for transactions with any international associate entities or specified domestic transactions. The Indian entity is required to demonstrate that the transactions are at arm's length price' for which the Company will have to keep prescribed records and obtain an audit report from a Chartered Accountant.

Foreign Tax Relief

India offers a very competitive tax regime and comprehensive network of Tax Treaties. DTAAs entered into by India with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations can claim a foreign tax credit for the tax paid by them in other countries subject to fulfillment of certain requirements. The credit amount is the lower of Indian effective rate of tax or the tax rate of the said country on the doubly taxed income.

06 Key Initiatives

Export Promotion

[Exports is at an all time high with significant trading opportunities].

- Special Economic Zones Act to be replaced with a new legislation to facilitate states to become partners in 'Development of Enterprise and Service Hubs'.[16]
- The Foreign Trade Policy 2015-20 extended up to 31 March 2022 and India's new Foreign Trade Policy 2021-26, under formulation.
- Revamped regulatory framework to boost export of jewelry through e-commerce.
- Offered several exemptions on exports to incentivise it.

Simplifying the business Ecosystem[15]

- **Introduction of SPICe+ and AGILE PRO** form by Ministry of Corporate Affairs (MCA) saves time and effort required for a nascent Company Incorporation. This form combines various services like PAN/TAN/Director Identification Number /GSTN etc.
- **Digitization of land records** has been one of the top priorities to bring efficiency and transparency in property related transactions. It allows citizens to view property transaction records in a digital mode.
- **Online Building Permission System (OBPS)** is an online Single Window for obtaining all building permissions.
- **Introduction of Insolvency and Bankruptcy Code of India (IBC) in 2016** was a game changer in resolving insolvency. The objective of the Code is maximization of value of assets by aiming at reorganization rather than liquidation of the Corporate Debtor. This law is evolving and once a long drawn and painful process, of closure of business is now a faster and more efficient process.

Recent Tax Incentives

- With a view to encourage more start-ups, the corporate concessional tax rate of 15 per cent is extended for a year, till 31 March 2024.[18]
- Several schemes introduced to promote manufacturing in India such as MOOWR, Production Linked Incentive Scheme for several sectors. Further, the Government also introduced RoDTEP scheme to promote exports of goods from India
- Several customs duty related changes have been introduced to motivate domestic manufacturers. The government has introduced a moderate levy, while exemptions for advanced machinery currently not manufactured in India would continue.
- The deadline for incorporation of startups claiming tax holiday benefits has been proposed to be extended by one year i.e, to 31 March 2023.[17]
- Faceless customs has been fully established.[19]

07 Startup India

Recognition for Startups [20]

Eligibility Criteria

- It should incorporated as private limited company, partnership firm or limited liability partnership.
- Annual turnover should not be exceeding Rs.100 crore for any of the financial years since its incorporation.
- An entity shall be considered as a startup up to 10 years from the date of its incorporation
- It should work towards development or improvement of a product, process or service and/or have scalable business model with high potential for creation of wealth & employment.

Following are not eligible to register as Startup

- Entities formed due to merger/ demerger/acquisition/ amalgamation/absorption/ will not be recognized as Startup.

However, merger or amalgamation between any of the following class of companies will be allowed subject to fulfilment of norms:

i. two or more start-up companies; or
ii. one or more start-up company with one or more small company

- Entities formed due to compromise/ arrangement as provided under the Companies Act, 2013 will not be recognized as Start-up.
- Conversion of an entity from one form to another shall not be a bar for availing recognition subject to the fulfilment of condition provided in sub-section (3) of section 80-IAC of the Income- tax Act, 1961.
- Holding including foreign holding, Subsidiary including foreign subsidiary, Joint Ventures, entities incorporated outside Indian Territory will not be recognized as Startup.
- A sole proprietorship is not eligible to apply for recognition.
- **Shareholding by Indian promoters in the startup should be at least 51%, as per Companies Act, 2013 and SEBI (ICDR) Regulations, 2018.**

Synopsis [21]

1. Startup India initiative was launched on 16th January 2016, by the Hon'ble Prime Minister
2. One of the world's fastest growing start-up hubs; 75,000+ startups, 100 unicorns.
3. Ranked 3rd largest in terms of number of startups, globally
4. An INR 1,000 crore start-up India seed fund has been launched in 2021 to aid growth of new start-ups
5. Revamped 32 regulations for startups, including angel tax and offered over 220 tax incentives and over 250 SIDBI funds of funds.
6. Investors are choosing India for startups due to availability of well-educated entrepreneurs and a fast-developing digital infrastructure.
7. Creation of 5.2 lakhs jobs across the country, with 45% of them having a base in Tier 2- Tier 3 cities.
8. A Rs.10,000 crore "fund of funds" is being managed for growing the domestic venture capital Industry

Key compliance calendar

Sr. No.	Due date	Nature of Compliance	Compliance Particulars
	Direct Tax		
a.	15th June	Advance tax	First installment for CY
b.	31st July	ITR filing (for non-audit cases)	ITR filing for PY
c.	31st July	TDS return filing	Quarter -1
d.	15th September	Advance tax	Second installment for CY
e.	30th September	Tax audit report (other than transfer pricing)	Tax audit report for PY
f.	31st October	Transfer Pricing Report (undertaken international or specified domestic transactions)	Submission of reports for PY
g.	31st October	TDS return filing	Quarter -2
h.	31st October	ITR filing (for audit cases without transfer pricing)	ITR filing for PY
i.	30th November	ITR filing for transfer pricing cases	ITR filing for PY (if having international or specified domestic transactions)
j.	15th December	Advance tax	Third installment for CY[1]
k.	31st December	Belated return or revised return filing	Belated return or revised return for PY[2]
l.	31st January	TDS return filing	Quarter -3
m.	15th March	Advance tax	1. Fourth installment for CY 2. Single and final installment for taxpayers opting for presumptive taxation scheme for CY
n.	31st May	TDS return filing	Quarter -4
o.	7th of succeeding month	Due date for depositing TDS	

Key compliance calendar

Sr. No.	Due date	Nature of Compliance	Compliance Particulars
	Indirect Tax		
a.	11th of every month	GSTR-1	Opted to file monthly return
b.	13th of every quarter	GSTR-1	Opted to file quarterly return
c.	20th of every month	GSTR-3B	Taxpayers having turnover above INR50 million in the preceding financial year
d.	22nd of every month	GSTR-3B	Taxpayers having turnover up to INR50 million in the preceding financial year for the specified 'X' category states.
e.	24th of every month	GSTR-3B	Taxpayers having turnover up to INR50 million in the preceding financial year for the specified 'Y' category states/UTs.
f.	30th April	GSTR-4	Annual Return for composite tax payers
g.	20th of every month	GSTR-5	Non-Resident Foreign Taxpayers & NRI OIDAR service provider
h.	13th of every Month	GSTR-6	Input service provider
i.	10th of every month	GSTR-7	TDS deductor
j.	10th of every month	GSTR-8	TCS collector
k.	31st December	GSTR-9	GST Annual return
L.	31st December	GSTR-9/9C	GST Annual return for PY

1. CY- Current Year
2. PY- Previous Year

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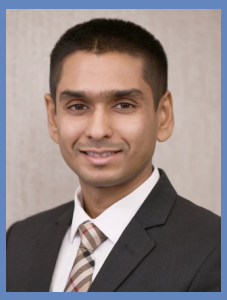

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