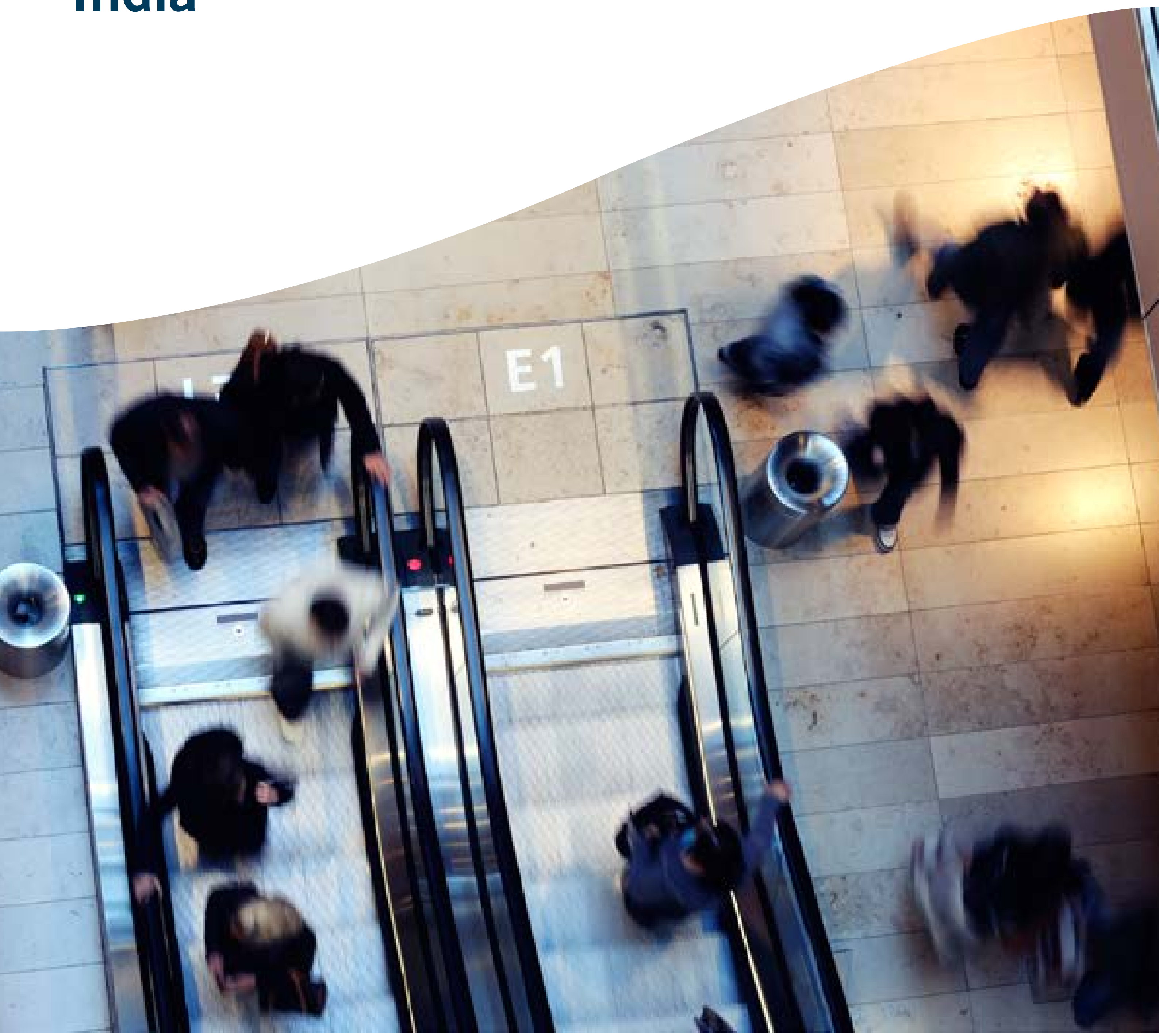
BAKER TILLY INTERNATIONAL

Doing Business in India



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Preface

This guide has been prepared by DesaiHaribhakti, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in India.

Baker Tilly International is the world's 8th largest network of independent accounting and business advisory firms by combined fee income, and is represented by 165 firms in 141 countries and 28,000 people worldwide. Its members provide high quality accounting, assurance, tax and specialist business advice to privately held businesses and public interest entities.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be downloaded from www.bakertillyinternational.com.

Doing Business in India has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance can be obtained from DesaiHaribhakti, contact details can be found at the end of this guide.

October 2016

Contents

1 Fact Sheet

Facts and figures as presented in sections 1 through 4 are correct as at 10 October 2016.

Geography

Location:	Southern Asia, bordering the Arabian Sea and the Bay of Bengal, between Myanmar (Burma) and Pakistan
Area:	3,287,240km^2
Land boundaries:	Bhutan, China, Nepal, Tibet and the Himalaya mountain range (north); Bangladesh and Myanmar (Burma) (east); Afghanistan and Pakistan (north-west)
Coastline:	Indian Ocean
Climate:	Varies from tropical monsoon in the south to temperate in the north
Terrain:	Upland plain (Deccan Plateau) in the south, flat to rolling plain along the Ganges, deserts in the west, Himalayas in the north
Time zone:	GMT +5.5

People

Population:	1.35bn (October 2016)
Religion:	Hindu (80.5%), Muslim (13.4%), Christian (2.3%), Sikh (1.9%), other/ unspecified (1.9%)
Language:	The Constitution of India recognises 23 official languages, including English and and Hindi.

Government

Country name:	India
Government type:	Federal parliamentary republic
Capital:	New Delhi
Administrative divisions:	29 states and seven union territories

Political situation

The president, vice-president and council of ministers officially wield executive power. The president is the head of state, and is given instructions (or "advice") by the prime minister, who leads the council of ministers (advisers). Parliament and the state governing bodies have control of the legislative branch of government. This body is made up of two houses (the Council of States (*Rajya Sabha*) and the House of the People (*Lok Sabha*)) and the president.

The president is elected for a five-year term by an electoral college made up of members from both houses of parliament; there is no limit to the number of times the president may be elected. There are 245 seats in the Council of States; 233 members are elected for six-year terms by members of state and territorial assemblies; the remaining 12 members are appointed by the president, also for six-year terms. There are 545 seats in the House of the People; 543 members are elected for five-year terms by popular vote; the remaining two members are appointed by the president, also for five-year terms.

Economy

GDP – per capita:	US$1,582 (2015)
GDP – real growth rate:	7.6% (2015)
Labour force:	496.96m (2014)
Unemployment:	4.9% (2013/2014)
Currency (code):	Indian rupee (Rs)

2 Business Entities and Accounting

2.1 Companies

2.1.1 Public companies

There is no minimum paid-up capital requirement for a public company. The minimum number of shareholders is seven, with no upper limit. The public company must have at least three directors and may issue an invitation to the public to subscribe for shares, debentures or deposits. It may be closely held and can be listed on the stock exchange.

2.1.2 Private companies

A private company must have at least two and at most 200 shareholders and at least two directors. There is no minimum paid-up capital requirement. The company is prohibited from issuing an invitation to the public to subscribe for any shares in or debentures of the company. It is also prohibited from issuing invitations or accepting deposits from persons other than its members, directors or their relatives.

A private company may also be formed as a One Person Company with one director. An annual general meeting is not required.

2.2 Partnerships

Partnerships are created by execution of a partnership deed. At least two members are required to start a partnership; the maximum number of members is limited depending on the type of business.

2.2.1 General partnerships

In a general partnership, partners are jointly and severally liable for the debts of the partnership. A general partnership is not a separate legal entity in its own right.

2.2.2 Limited liability partnerships (LLPs)

An LLP gives members the benefit of limited liability, and the flexibility of organising their internal structure as a general partnership. It is a separate legal entity and, while the LLP itself is liable for the full extent of its assets, the liability of the members is limited. An LLP must have at least two partners, including at least two designated partners that are individuals, one of whom must be resident in India.

2.3 Sole Proprietorships

A sole proprietor is an individual who owns and operates a business entity either in his own name or a selected trade name. There is no distinction between the proprietor and the business, resulting in unlimited personal liability.

2.4 Liaison Offices

A foreign enterprise can open a liaison office in India to carry out activities, including

- Promoting the export/import of goods and technical and financial collaboration, and
- Representing the parent company in India and acting as a communication channel

between overseas parent/group companies and Indian companies.

A liaison office is not permitted to carry out any income generating activity in India. Prior RBI approval is required for opening a liaison office.

2.5 Branches

A foreign enterprise can establish a branch in India with prior RBI approval. The branch is entitled to carry on the business activities permitted by the RBI at the time approval is granted.

A branch must obtain registration under the Companies Act and comply with the Act's requirements.

A branch is considered as a business connection of, and a permanent establishment (PE) in India for, the foreign enterprise. Accordingly, the branch is liable to tax on profits earned in India by the foreign enterprise at the tax rate applicable to foreign companies.

2.6 Joint Venture Companies

A joint venture is a business agreement in which parties agree to develop, for a finite time, a new entity and new assets by contributing equity. They exercise control over the enterprise and consequently share revenues, expenses and assets.

2.7 Audit and Accounting Requirements

Companies are required to keep and maintain such books and records to enable a true and fair view of the company's state of affairs. Books of account must be kept for a minimum of eight years. Financial statements should be presented in rupees.

The Institute of Chartered Accountants of India (ICAI) regulates accounting and auditing practices in India. Certain companies, including listed and unlisted companies with a net worth of Rs5bn or more, must use the Indian Accounting Standards (Ind AS), which are based on the International Financial Reporting Standards (IFRS). Certain other companies, including listed companies with a net worth of less than Rs5bn, and unlisted companies with a net worth or more than R2.5bn but less than RS5bn, must use the Ind AS for accounting periods beginning on or after 1 April 2017. Banking companies, non-banking finance companies, and insurance companies will be required to prepare their financial statements using Ind AS from 1 April 2018. Other companies may voluntarily adopt Ind AS.

Audits are mandatory for every company whether public or private. Financial statements must be audited annually by an auditor appointed by the company in its annual general meeting.

A tax audit is mandatory for business entities with gross turnover exceeding Rs10m and professionals with gross receipts exceeding Rs2.5m. Gross turnover includes any tax, duty, cess or fee (by whatever name called) under any law in force. The tax audit comprises verification of all records, documents, books of account etc. to determine the entity's actual tax liability. Only a chartered accountant holding a valid certificate of practice can carry out a tax audit.

2.8 Filing Requirements

Companies incorporated in India under the Companies Act are required to file annual accounts with the Registrar of Companies. Foreign investors and/or their agents in India are required to file certain statements and returns at periodic intervals as prescribed by the RBI under the Foreign Exchange Management Act, 1999. Various reporting requirements are prescribed under the Companies Act for both public and private companies.

3 Finance and Investment

3.1 Exchange Control

The RBI administers foreign exchange regulations, and is the governing authority for all matters relating to foreign exchange management and control. Foreign currency transactions are governed by the Foreign Exchange Management Act, 1999. Residents who come into possession of foreign money with a value above US$2,000 are required to exchange it within 180 days with a central bank or specialised government agency at the exchange rate set by the government.

A resident individual may hold a foreign currency account.

3.2 Banking and Sources of Finance

The banking system is well developed to meet trade, commerce and industry requirements and comprises public and private sector, co-operative and regional rural banks. The banking sector is regulated by the RBI. Banks and financial institutions grant loans for capital expenditure, for setting up a new project or for expansion and diversification programmes of existing units, for a fixed term ranging from one to seven years depending on the project requirements. Banks also offer working capital facilities secured against a business's current assets.

Venture capital funding is another option for start-up ventures. Venture capital funds provide mezzanine or bridge financing, and also provide entrepreneurs with incubator facilities with innovative ideas.

3.3 Investment Incentives and Restrictions

Most incentives are offered at state level, although preferential loans and loan guarantees are available at federal level.

State-offered incentives include cash grants, labour market and training assistance, and assistance for specific sectors such as manufacturing, biotech and pharmaceutical companies, and IT services.

Certain sectors are specifically excluded from foreign direct investment (FDI), such as real estate businesses, atomic energy and lotteries. In other sectors, including insurance and private and public sector banking, FDI levels are capped. The Department of Industrial Policy and Promotion, together with the Ministry of Commerce and Industry, publishes a consolidated FDI policy each year. The document includes the maximum permitted FDI for the restricted sectors.

FDI in some sectors is permitted only after obtaining government approval including defence, print media, broadcasting, telecom services, establishment and operation of satellites, and food product retail trading.

For business related incentives, see 5.7.

4 Employment Regulations

For employment tax considerations, see 5.3.

4.1 General Employment Matters

4.1.1 Employment law

India has numerous laws to govern employment at both federal and state levels. The main laws include the Trade Unions Act, 1926, the Industries (Regulation and Development) Act, 1951, the Equal Remuneration Act, 1976 and the Minimum Wages Act, 1948. Note that some states have considerably more rigid employment laws than others.

4.1.2 Employment contract

Federal law does not specify contract requirements. The states may have employment laws with minimum requirements; contracts are referred to as "appointment orders" and would usually include

- The employment start date
- The job title
- A description of the work duties, and
- Details on wage/salary.

4.2 Visas and Permits

Foreigners visiting India must generally obtain a visa in their country of residence. They should possess a valid international passport, except in the case of nationals of Bhutan and Nepal for whom an approved means of identification is sufficient.

A business visa is required by persons visiting India on business. A multiple entry business visa can be granted for up to five years.

A multiple entry employment visa can be granted on a case-by-case basis to foreign nationals wishing to take up employment in India. An employment visa must be obtained from the Indian Consulate in the applicant's country of residence prior to departure for India.

An entry visa is issued to those of Indian origin visiting India for tourism or other non-business related purposes. Family members of a person employed in India are also eligible for an entry visa. In the latter case, documents establishing the employment of the person employed in India, along with a copy of their employment visa, must be attached to the application.

Other foreigners visiting India for tourism or other non-business related purposes must obtain a tourist visa from the Indian Consulate in their country of residence. The visa is generally valid for up to six months. Alternatively, tourists from certain countries may obtain a visa on arrival, which is valid for a maximum of 30 days.

5 Taxation

Facts and figures as presented in section 5 are correct as at 7 October 2016.

5.1 Corporate Income Taxes

Resident companies, defined as companies which are incorporated and registered under Indian law, or are incorporated and registered elsewhere but with a place of effective management in India, are liable to tax on their worldwide income.

Non-resident companies are liable to tax on their income from sources in India, subject to the terms of any relevant double tax treaty.

For resident companies, the standard income tax rate is 30%. An education cess (EC) of 2% and a secondary and higher education cess (SHEC) of 1% are charged on the tax payable, giving an effective rate of 30.9%. If profits exceed Rs10m, a 7% surcharge is applied to the tax payable at the standard rate, with the EC and SHEC then applied to the increased amount, giving a 33.063% effective rate. This surcharge increases to 12% on profits exceeding Rs100m, with EC and SHEC then applied, giving a 34.61% effective rate.

Distributed profits made by resident companies are subject to a 15% dividend distribution tax (DDT) grossed up to 17.647%, plus 12% surcharge plus 3% cess, giving an effective rate of 20.36%.

A minimum alternate tax (MAT) applies if a resident company's tax liability is calculated to be less than 18.5%, plus EC, SHEC and surcharges, of its book profit. If the book profit exceeds Rs10m and Rs100m, the tax calculated is subject to a 7% and 12% surcharge respectively. The 3% EC/SHEC is then applied to the increased amount, giving overall effective rates of 20.39% and 21.34% respectively.

For non-resident companies with income from sources in India, the standard income tax rate is 40%. Applying the EC and SHEC results in an effective rate of 41.2%. If taxable profits exceed Rs10m, a 2% surcharge is applied to the tax payable at the standard rate, with the EC and SHEC then applied to the increased amount, giving a 42.024% effective rate. This surcharge increases to 5% on profits exceeding Rs100m, with EC and SHEC then applied, giving a 43.26% effective rate.

The 18.5% MAT also applies to certain non-resident companies with a permanent establishment or place of business in India, based on their book profit, subject to exemptions. The effective tax rate, inclusive of EC and SHEC, is 19.055%. If profits exceed Rs10m and Rs100m, the overall effective tax rates, inclusive of the 2% and 5% surcharges, are 19.436% and 20.008% respectively.

For all companies, where MAT applies, the excess of the liability over the tax calculated on ordinary principles may be carried forward and credited against future tax liabilities for up to 10 years.

Short-term capital gains, from the sale of assets owned for less than 36 months, or less than 12 months for certain securities, are generally subject to standard income tax rates. Gains from the sale of certain securities on a stock exchange and on which securities transaction tax (STT; see “Other Taxes – Securities transaction tax” below) has been paid are taxed at 15%. The EC, SHEC and surcharges on profits exceeding Rs10m and Rs100m apply.

Long-term capital gains are generally taxed at 20%, or 10% if an optional indexation relief is not claimed (where available). Again, the EC, SHEC and surcharges on profits exceeding Rs10m and Rs100m apply. Gains on which the STT has been paid are exempt from further tax.

Losses can be carried forward for relief against future profits for up to eight years. Losses cannot be carried back.

Companies were subject to an annual wealth tax of 1% of the value of specified assets in excess of Rs3m. The wealth tax was abolished on 1 April 2016.

There is no facility for pooling the profits and losses of group companies.

Tax returns must be filed for the financial year to 31 March and are due by the following 30 September. A company cannot choose an alternative tax year.

Companies with annual profits exceeding Rs10,000 must make quarterly advance tax payments, in June, September, December and March, and any balance must be paid before the tax return is filed. Other companies must generally make one full advance tax payment in March. The advance tax is determined by estimating the total income for the year, including from capital gains, and applying the applicable tax rates to different income components. Shortfalls or excess payments resulting from errors in estimation can be adjusted in subsequent instalments, but will attract interest.

5.2 Personal Taxes

Resident individuals are subject to tax on their worldwide income.

Non-resident individuals are subject to tax on their income from sources in India, subject to the terms of any relevant double tax treaty.

Special rules apply to “resident but not ordinarily resident” (RNOR) taxpayers; this is effectively a transitional tax residence status whereby an Indian who has been non-resident for up to nine years returns to India, and their income from abroad can benefit from not being subject to Indian tax for two years following their return.

For the 2016/17 tax year, the tax rates and thresholds for individuals aged 60 and under are as follows:

Taxable Income	Tax Rate
up to Rs250,000	0%
Rs250,001 – Rs500,000	10%
Rs500,001 – Rs1,000,000	20%
Rs1,000,001 – Rs10,000,000	30%
over Rs10,000,000	30%, plus 12% surcharge

The 0% rate threshold increases to Rs300,000 for individuals aged over 60, and to Rs500,000 for those aged over 80.

An EC of 2% and SHEC of 1% are charged on the tax payable; on income above the Rs10m threshold, and including the 12% surcharge, this results in an effective top rate of 34.61%.

Short-term capital gains, from the sale of assets owned for less than 36 months, or less than 12 months for certain securities, are generally charged to income tax at the progressive rates. Gains from the sale of certain securities on a stock exchange and on which STT (see “Other Taxes – Securities transaction tax” below) has been paid are taxed at 15%. In each case the EC and SHEC apply.

Long-term capital gains are generally taxed at 20%, or 10% if an optional indexation relief is not claimed (where available). For non-resident Indians, long-term capital gains from foreign exchange assets, as defined in section 115C of the Income-Tax Act, are taxed at 10%, although exemption applies in certain cases. In each case the EC and SHEC apply. Gains on which the STT has been paid are exempt from further tax.

There are no inheritance taxes. Some gifts received, other than from relatives, are taxable as income.

Individuals owning assets with an aggregate value exceeding Rs3m were subject to an annual wealth tax of 1% of the excess. Business assets were exempt. The wealth tax was abolished on 1 April 2016.

5.3 Employment Related Costs and Taxes

5.3.1 Payroll and social security taxes

A tax deduction at source (TDS) system requires employers to deduct tax from all salary payments and remit it directly to the central government. The tax deducted from an employee's salary is designed to reflect the estimated ultimate liability of the employee. An employee can request their employer to deduct tax in respect of other income.

Employers with 10 or more employees must pay contributions equivalent to 12% of their salaries to the employees' provident fund (EPF) and 0.5% to the employees' deposit-linked insurance scheme (EDLIS). They also pay additional EPF and EDLIS administration charges of 1.1% and 0.01% respectively.

Employees earning up to Rs15,000 per month must pay contributions of 12% of their salary to the EPF. Higher paid employees may make voluntary contributions. Contributions are deductible for income tax purposes.

Employers and employees must also make contributions of 4.75% and 1.75% respectively, subject to a salary cap of Rs15,000 per month, to the Employees' State Insurance Corporation (ESIC) under the following circumstances:

- Non-seasonal factories employing 10 or more people (mining operations are specifically excluded)
- Private medical and educational institutions, shops, hotels, restaurants, cinemas, road transport undertakings and newspaper establishments employing 20 or more people (10 or more people in some states).

5.3.2 Fringe benefits

Most cash allowances paid to employees are treated as part of their salary and are subject to payroll tax. Employees cannot claim a deduction in their tax return for expenditure incurred in producing their salary income. Entertainment costs are non-deductible.

Expenses incurred by employees which are reimbursed by employers and non-cash benefits provided by employers are subject to tax in the employees' hands if these payments are in the nature of salary. Fringe benefits provided to employees directly or by way of expense reimbursements can be treated as income in the employees' hands and are taxable as salary.

5.3.3 Relocation benefits

Relocation costs are generally tax deductible to an employer. Typically, such costs are incurred by employees and then reimbursed. Employer provided travel is generally exempt, subject to certain conditions being fulfilled. Employer provided board and accommodation are liable to tax as salary, except during business travel. Employer payment of school fees is taxed as income in the employee's hands.

5.4 Withholding Taxes

5.4.1 Domestic payments

Withholding tax rates apply to the following payments made to recipients in India:

	Tax Rate
Dividends	10%[1]
Interest	10%[2]
Royalties	10%

[1] No withholding tax payable where DDT has been paid (see "Corporate Income Taxes" above). Where recipient is an individual, withholding tax applies on payments exceeding Rs2,500.

[2] On payments exceeding Rs5,000 or Rs10,000, depending on the source of payment.

For payments made to taxpayers that do not have a permanent account number (PAN), the above rates are increased to 20%.

A 20% withholding tax applies to the buyback of unlisted shares.

5.4.2 Payments abroad

Withholding tax rates apply to the following payments made to recipients abroad:

	Tax Rate
Dividends	20%[1]
Interest	20%
Royalties	10%

[1] No withholding tax payable where DDT has been paid (see "Corporate Income Taxes" above).

The withholding tax rate on interest earned on government securities and rupee-denominated government and corporate bonds is reduced from 20% to 5% from 1 June 2013 until 30 June 2017. Certain other interest payments may also be subject to a 5% withholding tax rate.

For payments made to non-resident individuals exceeding Rs10m, a 12% surcharge applies.

For payments made to non-resident companies with total income exceeding Rs10m, a 2% surcharge applies where total income exceeds RS100m, a 5% surcharge applies.

All payments made to non-resident individuals and companies are subject to the EC at 2% and SHEC at 1%.

For payments made to recipients in countries with which India has a double tax treaty, the rates of withholding tax may be reduced under the terms of the treaty.

For payments made to taxpayers that do not have a PAN, the withholding tax is either the rate as provided in the various legal provisions or 20%, whichever is higher (plus EC, SHEC and surcharges).

For payments made to recipients in a “notified jurisdictional area”, as defined, (ie where there is a lack of effective information exchange between the jurisdiction and India) the withholding tax rate is the higher of 30%, the relevant withholding tax rate in force, or an alternative rate specified by the Income Tax Act.

5.5 Value Added Tax (VAT)

From 1 April 2005, states have gradually adopted VAT and have implemented a VAT system. VAT is levied on sales within the state, and central sales tax (CST) is charged for interstate sales.

State VAT is charged on sales of goods at rates that can vary from state to state, but generally range up to a top rate of 20%, depending on the category of goods.

CST is charged at 2% on the inter-state movement of goods.

Service tax applies to the sale of a wide range of designated services. The effective tax rate is 15%, including a 0.5% swachh bharat cess (SBC) and a 0.5% krishi kalyan cess, subject to exemptions.

From 1 April 2017 a number of indirect state and central government taxes are set to be replaced with a goods and services tax (GST).

5.6 Other Taxes

5.6.1 Property taxes

Property tax is charged at fixed rates based on the area where the property is located and the property use and size.

There is no special income tax on real estate. Property transfers are subject to stamp duty, which varies from state to state.

5.6.2 Securities transaction tax (STT)

Transactions in shares and securities listed on a recognised stock exchange are subject to STT of between 0.001% and 0.025%.

5.6.3 Commodities transaction tax (CTT

CTT applies on the sale of non-agricultural commodity derivatives, and is payable by the seller at 0.01% of the transaction value.

5.6.4 Digital services equalisation levy

From 1 June 2016, a 6% levy is imposed on specified digital services provided by non-resident businesses without permanent establishments to resident businesses or permanent establishments, subject to exemptions.

5.6.5 Excise and customs duties

Excise duty is payable on goods produced, while import and customs duties are payable on import of multiple items, raw materials, capital goods, etc. The levy of excise and import duties may be ad valorem (ie a percentage of the cost of production or of the maximum retail price or the import cost) or at a specific rate per unit. The EC, SHEC and surcharge apply to the basic duty (see "Corporate Income Taxes" above).

5.7 Tax Incentives for Businesses

5.7.1 Research and development (R&D) expenditure

A number of incentives exist to encourage investment in R&D, including allowable deductions of up to 200% of qualifying expenditure (excluding the cost of land and buildings) in the year of incurrence.

5.7.2 Patent income

From 1 April 2017, qualifying gross royalty income from a patent registered and developed in India by an Indian resident is set to be taxable at a concessional rate of 10% (plus surcharge and cess).

5.7.3 Economic zones

Special economic zones (SEZs) are considered as foreign territory in all that concerns taxes and customs. Companies in an SEZ are eligible for a total tax exemption for the first five years and a 50% tax exemption for the following five years.

Export oriented undertakings located in free trade zones, software technology parks, or in hardware technology parks whose total production is intended for export are entitled to income tax exemption for 10 years as well as to import tax exemption.

5.7.4 Infrastructure development and other investments/projects

Tax exemptions apply to certain infrastructure development that is government approved or located in an SEZ.

Other specified investments and projects also benefit from tax exemptions of between 15% and 100%, including:

- Investment in industrially “backward” states
- Profits derived from collecting and processing biodegradable waste for:
  - Generating power
  - Producing biofertilisers, biopesticides or other biological agents
  - Producing biogas, and
  - Making pellets or briquettes for fuel or organic manure
- Investment in new plant and machinery purchased between 1 April 2013 and 31 March 2017 (although certain exceptions apply).

5.7.5 Wind turbines

Components and parts of wind-operated electricity generators, including rotors, blades and towers, are exempt from excise duty.

5.7.6 Employment incentives

Indian companies engaged in the manufacturing or production of goods, and employing more than 100 new regular workers, can benefit from a 30% deduction of wages to new employees; the incentive applies to the year of employment of new workers plus two years. Certain conditions must be fulfilled.

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