# Taxation and investment in india

Parts of the World, Asia

## Business environment

The Indian government is a union government, created by the constitution of India . In India they have 29 states and seven union territories. The country supports a parliamentary democratic system. The parliament has two houses, the Lok Sabha and the Rajya Sabha who's main working is to approve the legislation, inspect the administration, they also play a vital role in passing the budgets for the country. These states are funded by the center through various forms and these states are responsible to the center directly.

India has a developing mixed economy with the 6th largest economy in the world. India has three major sectors which are Agriculture, Manufacture and Service. India being a developing economy, has put in place various policies for Foreign Direct Investment (FDI). The foreign companies invest directly in Indian businesses taking advantage of the cheap labor rates and changing business environment. For such a large developing economy it was necessary to build schemes which would attract investment, so the government of India has launched certain programs such as " Made in India" in which the government supports people to make and buy products which are made in India instead of importing goods from other countries, then another scheme is " Skill India", in which the people are provided with training in their required fields to support the industrial needs. Another initiative is " Start-up India", in which the government funds money to people who have some creative start-up business plan for which it has a budget of Rs. 10, 000 crores. Some of the other schemes are Smart city, Digital India , Swachh Bharat Adhyayan and Power tax India. These initiatives had opened a portal for a large number of investors in India such as financial institutions, private equity firms, suppliers, contractors, etc. India aims for removing the various hurdles such as poverty, illiteracy, etc., and in order to do so India has become a beetling member of international organizations, such as United Nations(UN), SAARC, BRIC, etc. Price control The central and state government passes various legislatures to control the prices of the commodities. The government can control the production, supply, price, distribution of any commodity at any time in order to make the availability of good even in time of scarcity.

## Currency

The currency in India is denoted by INR as is called Indian rupees.

The Indian currency can only be printed by the central bank and no one else. From 9th November 2016, the currency of 500 and 1000 ceased to be a legal tender and new legal tenders were introduced into the market which are of 50, 200, 500, and 2000 denominations.

## Banking and financing

The central bank of India is the RBI. The RBI is the regulatory authority for all the other banks working in the country. The RBI has some primary functions that it performs which are:

- Note issuing authority
- Banker to the banks
- Banker to the government

- Regulator of foreign currency
- Credit control function
- Supervisory function.

The RBI also has developmental functions such as, development of financial sector, of agricultural sector development, provision of training, data collection. The banking functions in India are mainly carried out by public sector banks, private sector banks and foreign banks. In public sector banks a major stake is owned by the government of India and in private sector banks a major stake is owned by private investors and in foreign banks they operate in India but there head quarter is in another country.

There are a few other type of banks which are:

- Regional rural banks
- District central cooperative banks
- Cooperative banks.

Lately few new types of banks have been established which are small finance banks and payments bank. The small finance banks aim at reaching that sector which has not yet been touched, and the payment banks they regulate payments and transactions for labor class and small businesses.

## Foreign stake

Foreign investment is directed by the Foreign Direct Investment policy in India. The government has eliminated many restrictions from the FDI policy making it easy for the foreign investors to invest in India, but still there are a few sectors which the government has kept out of the range of the foreign investors such as telecommunications, insurance, defense, etc.

The FDI can be made through two routes: automatic and approval route. Automatic route – In this route direct investment is allowed to be made without the approval of the government or the RBI. The Indian company has to directly submit the documents to the RBI through an approved dealer. Approval route – The investments which doesn't get approved for the automatic investment has to go through approved route. For this investment the investor has to get his investment approved by the government. Yet the government has kept a few sectors away from the reach of the investors such as " railways". Indian companies have removed the difference between the different kinds of investments and no the companies can issue shares, bonds, debentures, equity shares, preference shares, etc. The RBI has granted new investment which are known as " Masala Bonds", in which the invest is made outside India but are denominated in Indian rupees.

## Tax incentives

In order to attract foreign investments in India the Indian government has been encouraging the investors by providing them with a handful of reasons to do so. The government has kept in mind the backward or unexplored areas for development and are providing incentives to the companies if they are carrying on the business in those areas.

The government is providing them many tax and non-tax incentives and special economic zone incentives. The incentives include:

- Tax holidays
- Increased depreciation
- Additional deduction of investment made in machinery, etc.

- The government extends medium and long term loans, and even sometimes invests in equity of the project.

## Enticement under SEZ units

The companies set under the SEZ units are awarded a lot of incentives relating to indirect taxes. These units are also exempt from customs duty on goods and inputs. Numerous tax incentives are provided to companies dealing in export or import of goods and services, these incentives are granted under various schemes.

Various states provide various incentives depending on the need of the area in terms of development.

These schemes are not available throughout the life time but in certain times and only after fulfilling certain conditions.

## Exchange control

The India's exchange control policy is set and administered by the RBI. The foreign exchange is controlled under the Foreign Exchange Management Act 1999 which the parliament enacts.

This act allows foreign companies to spread its branches in India and to freely transfer its profits to head branch outside the country through a verified dealer.

## Principal forms of business entity

The primary types of businesses doing business in India are Limited Liability companies; they can be public companies, private companies or sole trader company. In public company the major stake is held by the government, in private companies the major stake is held by the private investors and in sole trading whole of the business is run by a single entity. Then there is limited liability partnership; partnership firm; association of persons; representative offices; project or site offices of foreign companies operating in India. A foreign investor may choose to form of business to invest and run.

A Limited Liability Company is the most widely used business form in the country for direct investment. This form of business is governed by the companies act 1956/ 2013, and insolvency and bankruptcy act, 2016. Formalities for setting up a company In case of a foreign company it has to integrate under the companies act as a subsidiary or as a joint venture.

In case of a private company the company needs to have at least 2 directors out of which one should be a permanent resident of India and 2 members are required. And in case of a public company it requires 3 directors out of which 1 should be a resident of India and requires 7 members.

The individual must have a DSC (Digital Signature Certificate) and then they should apply for DIN (Directors Identification Number) in order to act as a director. The company has promoters who promote the company and they have to apply for the name of the company, according to the companies' name guidelines, then they have to submit the MOA (Memorandum of Association) and the AOA (Article of Association) to the ROC (Registrar of companies) along with a prescribed fees. If the ROC finds all the documents suitable then he will issue the certificate of incorporation, after which one can start it's working.

The main forms of business entities are public limited companies, private limited companies, small companies and one person companies (OPC). These companies can either have limited liability or can have unlimited liability. A company can be either limited by shares or can be limited by guarantee. In case of limited by shares the liability of a partner is limited to the amount of paid up capital and in case of limited by guarantee the liability is limited up to the amount for which he/she has given guarantee for. In this case a company being limited by shares is more common and in case of a public limited company it can be closely held, can be listen in stock exchange or can be unlisted. A private company is a company which is restricted by its AOA to allow any invitation to public for the subscription of shares, the article also restricts the maximum number of members to 200 (which only consists of the partners and shareholders). A private company has restrictions on transfer of shares.

But in case of a public company it has no restriction on the transfer of shares, any person can subscribe to its shares and there is no upper limit for the maximum number of members i. e. it can have as many members as it like. If a private company is a subsidiary of a public company then the private company is also regarded as a public company.

A small company is a company whose total paid up capital will not exceed 50 million. If a company is a subsidiary, holding company, or registered under section 8 of the companies' act 2013, will not be considered as a small company. A section 8 company can be any NGO or non-profit organization which runs for the promotion of sports, arts, sciences, commerce, trust, etc.

and is registered under the companies act 2013, such companies are easier to register and to run. A one person company is a company which is solely run by an individual who is a resident of India along with a citizen of India. The scale of operation of such companies are small and these can be set up and dissolved quickly. Requirement for limited company Capital: There is no minimum paid up capital requirement prescribed for both public or private companies. Share capital: There are basically two types of share capital issued by the companies, that are preference shares and equity shares. For a preference share holder they have preferential rights which means that they'll get the dividend at a fixed amount or at a fixed rate which is proposed to them. The preference shareholders are offered the dividend and the repayment of capital at the time of winding up of the company before the equity shareholders. The equity shareholders possess a right to vote but if the preference shareholders are not provided with the dividend for 2 years then they can vote at any resolution passed on by the company. The securities can be retained in D-MAT form. In case a public company issues public shares or even right shares they give an option to their beneficial to obtain it in physical form or electronically. And the securities of a company which is not there on stock exchange can also be retained in electronic form. Members: In case of a private company there should be a minimum of 2 members and a maximum of 200 members, and in case of a public company there should be a minimum of 7 members and there is no upper limit for the maximum number of members. There should be only 1 member for an one person company. All the members can be a resident of India or can be a foreigner. Management: A limited company must have a managing director

(MD), or a director, or a CEO. For the MD and director the term is of 5 years which can be extended. The company must have a CFO and a company secretary as its KMP. A KMP should only be engaged with one company.

Board of directors: The board of directors is appointed by the shareholders, as they work on the behalf and for the benefit of the shareholders. For a private company there are a minimum of 2 directors required and in case of a public company there are 3 minimum directors required. And for OPC there is only 1 director required. For the limited companies there can be 15 directors appointed and can be increased after passing a resolution, out of these 15 directors at least 1 should be an Indian resident.

The directors can be selected by a simple majority or by the methods mentioned in the AOA. A director will be required to empty the office if he/she fails to attempt all the board meetings held in 12 months. A board meeting should be held after giving a 7 days prior notice or a shorter notice if agreed by all the directors. There should be at least 4 board meetings held in a year, one in every quarter. Board committees: The main types of board committees that are there are Audit committee, Nomination committee and Remuneration committee. An audit committee is formed when the company has a turnover of 1 billion or has a loan or made a deposit of 500 million. There should be at least 3 directors and a majority should be of independent directors. For the other two types of committees there can be 3 or more non-executive directors and at least half of them should be independent directors.

And a stakeholder relationship committee should be formed if there exist more than 1000 shareholders. General meetings: A general meeting is to be held once in a year, and has to be held within 6 months from the closing of the financial year. The very first general meeting is to be held within 9 months from the closing of 1st financial year, i. e. there is no requirement for a AGM in the year of embodiment. The gap between two AGM's shouldn't exceed 15 months' time gap. An AGM is held in the working hours, from 9 to 6, and is to be held in the city of its registered office.

A quorum is the minimum number of members required to carry on a meeting, in case of a private company it is limited to 2 members but in case of public company there should be 5 members if the total number of members are below 1000 and 15 if the total number of members are between 1000 to 5000, ad a total of 30 members are required if the total number of member are above 5000. If the quorum is not present in 30 minutes from the start of the meeting then the meeting is automatically adjourned to the next week.

In a meeting there are resolutions passed, a resolution can be of two types special or ordinary. For an ordinary resolution it can be passed with a simple majority but for passing a special resolution a majority vote of 75% is required.

A person designated to attend a meeting and vote can have a proxy done for his vote, the proxy can only vote that too when asked, he doesn't have the right to speak or call for a vote.