INDIA READER

Business India Series by the Embassy of India, Vienna

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FREQUENTLY ASKED QUESTIONS ON LEGAL AND TAX ASPECTS

Investment climate of India has undergone a sea change ever since the opening of its economy in 1991. The regulatory environment for foreign investments in India has undergone a constant change from being a closed economy to an open and investor friendly economy. This has substantially reduced the industrial licensing requirements, removed restrictions on expansion and facilitated easy access to foreign technology and Foreign Direct Investment (FDI).

These constant measures and efforts of the Indian Government are reflected and confirmed by the current World Bank's Ease of Doing Business Report. In a report for 2019 India jumped to rank 77 as compared from 142 in the year 2014.

The objective of this brochure is to equip Austrian Nationals interested in doing business in India. It is primarily based and prepared in view of most frequent queries which are received by the Commercial Section of the Indian Embassy. The information provided hereunder is general in nature and meant for initial orientation purposes only.

Is Foreign Direct Investment open in all the sectors in India?

Foreign Direct Investment (FDI) is open to almost all sectors except in eight specified sectors among others cigar and cigarettes, gambling and betting and lottery business sectors, where FDI is prohibited.

In certain sectors FDI is allowed only to a certain percentage, for example - Banking-private sector (74 per cent), Telecom Services (74 per cent), Print Media (26 per cent) Insurance (26 per cent). The sector wise limits can be found at ***www.dipp.nic.in.*** Also, the India Investment Grid (IIG), an online portal developed by Invest India and the Department of Industrial Policy & Promotion(DIPP), Government of India, is to showcase investible opportunities across the public and private sectors in India. Further information can be found at ***www.indiainvestmentgrid.com.***

Do I need any approvals before entering into the Indian market?

For most of the sectors no prior approval is required. In certain sectors prior government approval is mandatory for entering the Indian market.

Is there any minimum amount of investment required from the foreign investors?

Generally no minimum amount of foreign investment is required for entering the Indian market. Investment amounts be freely planned in accordance with business requirements, taking into account the tax law framework.
Only in very specific sectors like Multi Brand Retail Trading a minimum foreign investment is required.

How can I sell my products to India without any formal presence in India?

Products can be exported directly to the buyers in India as per the conditions agreed between buyer and the seller. Distribution options available are:

- Distributors/Importers who buy products from the foreign Company and sell them to the consumers.

- Agents can be appointed who promote sale of your products on commission basis.

Exercising prudent procedures and practices as in all international business transactions is a precondition. Under the Indian legal framework, robust contractual documentation is highly recommended. Extremely important aspect in such set up is to clarify your tax liability before entering into any contractual relationship. An expert advice on legal and tax issues is must before entering into any formal arrangements.

Can I use our standard international commercial contract for transactions with India?

Indian and Austrian legal systems are based on different principles i.e. Common and Civil Law respectively. It is possible to use your international commercial contract but with a possible risk that certain provisions might not be recognized by the Indian courts and therefore may not be executable in India. Hence customize your contract to the Indian Laws. For instance India is not a signatory to the United Nations Convention on Contracts for the International Sale of Goods (CISG) as opposed to Austria. A provision for inclusion of CISG rules, if desired, should be expressly agreed in the contracts with India. Frequently, arbitration clauses are used to provide for dispute resolution mechanisms (for example ICC arbitration court).

Can my Company operate in India without formal presence?

No. In order to operate in India, you need to establish a formal presence in India (such as Liaison Office, for all available options see below).

Can I open a bank account in India without formal presence?

No. Opening of a bank account without formal presence is not permitted for foreign entities in India.

What are the various entry options to enter the Indian market?

Depending on your business and strategy plans, there are various ways for entering in the Indian market. In case formal business presence is desired the foreign investors have the following options:

Wholly Owned Subsidiary
A wholly owned subsidiary can be set up as a Public Limited Company or a Private Limited Company ("Pvt. Ltd."). A Pvt. Ltd., which is comparable to the Austrian Company form "GmbH" is the most common and preferred entry form used by foreign investors in India. For setting up a Pvt. Ltd., minimum 2 shareholders (can be both natural and legal persons, inside or outside of India), 2 Directors (only natural persons) are required. No minimum share capital is required for setting up a Pvt. Ltd. The Board of Directors is the decision making body of the Pvt. Ltd. The Pvt Ltd. Is the most frequently used legal form of foreign investment.

Joint Venture – with an Indian Partner
A Pvt. Ltd. can be set up as a 100% subsidiary or together with an Indian Partner as a "joint venture company". An Indian partner is obligatory only for very few sectors like Insurance or multi brand retailing (refer above). An Indian Joint venture partner can be chosen due to strategic reasons.
Another form of market entry available to foreign investors is through Mergers and Acquisitions of existing companies in India.

Limited Liability Partnership (LLP)
LLP as a business entity was introduced in India in 2009 and since 2011 this entity form is also available for the foreign investors under automatic route. LLP combines the advantages of a limited liability Company and flexibility of a Partnership. The LLP permits individual partners to be shielded from the liabilities created by another partner's business decision or misconduct. One of the partners or at least a representative of one of the partners must be a resident Indian (can also be a foreign citizen living in India).

Branch Office (BO)
A BO (Zweigniederlassung) of a foreign Company can be set up in India after prior approval of the Reserve Bank of India ("RBI"). A BO can undertake all the activities of the parent company apart from manufacturing of goods. The BO is treated as a presence of the foreign company in India is taxed accordingly.

Liaison Office (LO)
A LO also known as Representative Office of the foreign company can be opened on prior approval of RBI. The activities of a LO are limited mainly to promotion and representation of the parent company. No commercial, trading or industrial activity is allowed. Keeping to these restrictions, a LO usually is not taxable in India.

Project Office (PO)
For undertaking a specific project work in India a PO can be set up after the prior approval of the RBI. The activities of the PO are limited to the activities related and incidental to the approved Project. No further activities may be undertaken by the PO. This form is suitable for companies engaged in turnkeys or installation projects. A PO is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign company. The PO technically is a

presence of the foreign company in India and taxed accordingly.

Is it mandatory to appoint Indian nationals as Directors in a wholly owned subsidiary?

No, it is not mandatory to appoint Indian nationals as Directors neither for a private limited company . Only natural persons can be Directors and they can be foreign citizens as well. However it is mandatory that one of the Directors is resident in India i.e. present in India for a minimum 182 days or more in the previous year.

What are the corporate tax rates in India?

Company form	Rates in percentage (FY 18-19)
Domestic Company	30*
Foreign Company	40**

** plus a surcharge of 7% applied on the tax paid by companies with gross turnover of INR 10 million (12% for gross turnover of INR 100 million)and education cess at 4%, total tax rate = 34,94% at max.*
*** plus a surcharge of 2% applied on the tax paid by companies with gross turnover of INR 10 million (5% for gross turnover of INR 100 million) and education cess at 4%, total tax rate = 43.68 % at max.*

In addition to the income tax paid by the domestic company, any dividend paid or distributed is charged with a Dividend Distribution Tax (15%) at the effective rate of 20,56%. This tax is levied on the domestic company itself. It is not in the nature of a withholding tax and thus usually cannot be credited against the income tax payable by the shareholder in his country of residence.

The **LLP** is taxed (as an opaque entity) at a rate of 30% with no Dividend Distribution Tax applying under current law. Investors planning a major investment in India should review the option to form a LLP.

Which indirect taxes and duties are to be considered for business with India?

In July 2017 India rolled out a unified Goods and Services Tax (GST) substituting most central, state and local levies. GST is a modern value added tax levied on the supply of goods and services. It allows a seamless input tax credit so that the burden of tax only is on the final consumer. The de facto standard rate of GST is 18% (other slabs exist). For details please refer to our FAQs on GST Business Reader Publication.

The import of goods is subject to Basic Customs Duty of 7.5% (many types of machines) or 10% (standard rate) plus GST. Due to the fact that GST paid upon import is available as tax credit in most cases, only Customs Duty is a cost in the hands of the importer.

Entry Options - Overview

Form	Private Limited Company	Branch Office	Liaison office	Project office	Limited Liability Partnership
Approvals	Only in specified sectors Automatic Route + Registration ROC	RBI Approval	RBI Approval	RBI Approval	Only in specified sectors Automatic Route
Status	Indian Company	Foreign Company	Foreign Company	Foreign Company	Indian Partnership
Set up time	8 to 12 weeks	Min. 8 to 12 weeks	Min. 8 to 12 weeks	8 to 12 weeks	8 to 12 weeks
Features	All commercial activities as per the Company documents	Commercial activities allowed; No production	NO Commercial activities allowed	Temporary site. Limited to project approved	Commercial activities allowed
Control	Board of directors	Parent Company	Parent Company	Parent Company	Partners
Tax rate	34,94%	43,68%	Not taxable	43,68%	34,94%
Closure /app. time	ROC 12 to 16 months	RBI 6 to 8 months	RBI 3 to 6 months	RBI 3 to 6 months	ROLLP 12 to 16 months

FIPB – Foreign Investment Promotion Board RBI – Reserve Bank of India ROC – Registrar of Companies ROLLP – Registrar of Limited Liability Partnership

DISCLAIMER

This FAQ contains general information only and is not intended to be comprehensive. It is not a substitute for professional advice or services, and it should not be acted on or relied upon or used as a basis for any investment or other decision or action that may affect you or your business. Before taking any such decision you should consult a suitably qualified professional adviser. Whilst reasonable effort has been made to ensure the accuracy of the information contained in this publication, this cannot be guaranteed. Neither the Publishers nor the Authors shall have any liability to any person or entity which relies on the information contained in this publication, including incidental or consequential damages arising from errors or omissions. Any such reliance is solely at the utilizer's risk.

Sample Calculation for Basic Customs Duty rate of 10%

Import Duties Example	Tax rate	Effective tax burden
Customs Duty (reg. Rate)	10%	10%
IGST	18%	19,80%
Total		29,80%

Sample Calculation for Basic Customs Duty rate of 7.5%

Import Duties Example	Tax rate	Effective tax burden
Customs Duty (Machines)	7.5%	7.5%
IGST (Machine)	18%	19,35%
Total		26,85%

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Rödl & Partner is a German multinational professional services firm providing legal, tax and audit services with 111 offices in 51 countries including India (New Delhi, Mumbai, Pune, Bangalore, Ahmedabad and Chennai).

The Embassy of India Commercial Wing

The website of the Embassy of India, Vienna, offers a wide variety of business related information carefully selected to meet India-Austria's business demands. In our online portal, companies not only have the opportunity to find relevant information on India-related trade matters, but can also interact with the commercial wing of the Embassy by submitting their trade inquiries online.

Additionally, the Embassy complies a quarterly economic and commercial report on Austria, which is targeted at Indian business readers and trade corporates. The same can be received via email by registering with the Embassy's Commercial wing.

Besides the online presence, the Embassy also has a Business Centre Facility, located on the first floor of the Main Chancery Building. Business people and parties interested in requesting, exchanging or providing information on India-related business matters are cordially invited to visit us. You can either schedule an appointment with a representative of our commercial wing at the contacts given below or simply visit us during our opening hours Mondays to Fridays from 11AM to 1PM.

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