

# Country Profile

## India

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## **Glossary**



# EXECUTIVE SUMMARY

The Indian economy is one of the main drivers of global economic growth. With a population in excess of one billion, India has attracted the interest of multinational companies. India's economy has grown off the back of significant developments in particular industry sectors, notably information technology, pharmaceuticals and textiles. However, the strong economic growth masks serious income disparities in a country in which the majority of the labour force is still employed in agriculture.

From a cash management perspective, there are some restrictions on resident and non-resident accounts in both domestic and foreign currency. Notional pooling is not permitted in India. As a result, cash concentration is the only cash management structure available to companies. Cross-border sweeping is allowed but is subject to reporting requirements, exchange controls and, in some cases, lifting fees. Payments are commonly effected by cheque. Credit transfer use has rapidly increased rapidly in recent years and they are now the most popular cashless instrument in India in terms of value. Debit cards account for the largest share of cashless payments in terms of volume. India has a variety of different payment systems. The most used are RTGS for electronic payments, NEFT for low-value electronic payments and a paper-based clearing system. The Reserve Bank of India is supporting the development of infrastructure links that will improve the nationwide reach of the country's payment systems. Indian companies increasingly have access to electronic and internet banking services, although these still tend to be concentrated in the main financial centres.

## Economic / Political Environment

### Overview

Since May 2004, India has been governed by a Congress Party-led United Progressive Alliance (UPA) coalition government. The government's first term in office was dominated by division amongst coalition members. This resulted in a failure to pass many of the economic reforms, especially investment and labour law liberalisation, pledged by the government in its 2004 election campaign. In May 2009, the Congress Party won a second term in office with a convincing general election victory. This has enabled the Congress party to build a more stable coalition government, increasing the chances of the government's reform agenda being fully realised.

Since the 1990s, India has enjoyed high economic growth rates, with GDP expanding by an average of 8.8% between 2003 and 2008. This growth was driven by the development of both the manufacturing and services sectors, which were then deeply impacted by the global economic slowdown. As a result, economic expansion stalled in late 2008. Recovery in the global economy, together with a number of economic stimulus initiatives introduced by the Indian government, initially saw India's economy re-emerge strongly from the global economic downturn during the financial years 2009-10 and 2010-11. However, economic expansion has slowed again in the past year, with India's government estimating that the economic growth was down to 6.9% in the 2011-12 financial year, on the back of weakening industrial output and growth is expected to fall further during the 2012-13 year.

As well the recent cooling of India's industrial growth, a key concern for the Indian economy lies in its primary sector. Despite agriculture contributing only 13.9% of India's GDP, compared to the 59% contributed by the services sector, two-thirds of the country's workforce is employed in agriculture. As a result, a significant proportion of this population remains in poverty and there is a growing income disparity within the country. Although the Indian government has attempted to address the problem – the 11th five-year plan for 2007-2012 concentrated on energy, infrastructure, health, education and agriculture – a spiralling budget deficit (around 5.9% of GDP at the end of 2011-12) makes funding such projects difficult to achieve. The Indian government has stated that it aims to lower the budget deficit down to around 5.1% of GDP during the 2013-13 financial year. India's economy has also recently experienced spiralling prices, with inflation exceeding 9% during most of 2011, a higher rate of inflation than any other major global economy. Inflation has since fallen slightly and stood at 7.55% in August 2012.

## Key indicators

		2006	2007	2008	2009	2010	2011			2012	
							Q3	Q4	YEAR	Q1	Q2
GDP @ year end exchange rate	USD billion	971	1,265	1,162	1,383	1,713	-	-	1,663	-	-
GDP volume change (year on year)	%	+ 9.6	+ 9.3	+ 6.7	+ 8.5	+ 8.4	+ 6.1	+ 5.3	+ 6.5	NA	NA
GDP per capita	USD	839	1,078	976	1,145	1,398	-	-	1,339	-	-
Consumer prices change (year on year)	%	+ 6.1	+ 6.4	+ 8.3	+ 10.9	+ 12.0	+ 9.2	+ 8.4	+ 8.9	+ 7.2	+ 10.1
Exchange rate - INR per USD (end period market rate)		44.245	39.415	48.455	46.680	44.810	48.925	53.260	53.260	51.157	56.309

Source: IMF International Financial Statistics, September 2012.

## Population (July 2012 est.) 1.20 billion

Sectoral analysis % (2011 est.)	
Agriculture	17.2%
Industry	26.4%
Services	56.4%

# Regulatory Environment and General Market Practice

## Key summary

There are some restrictions on resident and non-resident accounts in both domestic and foreign currency. Notional pooling is not permitted in India. As a result, cash concentration is the only cash management structure available to companies. Cross-border sweeping is allowed but is subject to reporting requirements, exchange controls and, in some cases, lifting fees.

## Resident and non-resident status

A company is considered resident if it has been registered in India under the Indian Companies Act 1956 (or other specified acts), or it was controlled or managed wholly from within India during the relevant year.

## Central bank reporting

All foreign exchange transactions must be made through the established banking system. Data recorded by the banks is passed to the Reserve Bank of India for balance of payments calculation and other purposes under the terms of the 1999 Foreign Exchange Management Act. Non-bank companies are not required to prepare central bank reports.

## Exchange controls

India's currency is the rupee (SWIFT code INR). Its value is determined in the interbank foreign exchange market.

India applies exchange controls, which are set by the government and administered by the Reserve Bank of India under the terms of the Foreign Exchange Management Act.

Unless permission has been granted by the Reserve Bank of India, all export proceeds must be repatriated within 12 months of the shipment of goods. Exporters are permitted to keep 100% of foreign exchange receipts in foreign currency accounts based in India.

Any foreign exchange payment for imports with a value in excess of the equivalent of USD 100,000 must be supported by relevant documentation.

## Liquidity

### Account types

Residents can open and maintain foreign currency accounts domestically and abroad. Authorisation from the Reserve Bank of India must be obtained to hold foreign currency accounts, either domestically or abroad, except for those that the Reserve Bank includes under a general permission.

Certain non-residents are also allowed to hold foreign currency accounts but these are subject to a number of restrictions. A non-resident company must usually have an office in India to be permitted to open a domestic currency account. Subject to exchange controls, domestic currency is convertible into foreign currency.

#### General market practice

Interest cannot be offered on current accounts denominated in domestic currency.

Resident foreign currency accounts are only permitted for unspent foreign exchange out of eligible limits from a foreign trip, foreign exchange for payment of services rendered abroad or from non-residents in India as gifts or payments.

Exporters are permitted to open EEFC (exchange earners' foreign currency) accounts. These are non-interest bearing current accounts for the payment of trade-related expenses.

Permission is required from the Reserve Bank of India for all remittances above USD 200,000 per year on foreign currency bank accounts held by residents abroad.

## Cash concentration / ZBA sweeping

Cash concentration is a liquidity management capability whereby account balances are physically transferred to/from a single account (known as a master, header or concentration account) for liquidity management purposes. Cash concentration can take these forms:

Zero balancing (ZBA), sometimes referred to as sweeping, is a cash concentration capability whereby the total of all account balances is physically transferred into a nominated account.

Target balancing, also known as sweeping, is a cash concentration capability similar to ZBA, whereby all account balances are physically transferred into a nominated account leaving a predetermined amount in the sub-accounts.

Threshold balancing is a cash concentration capability similar to ZBA, whereby the balances of the sub-accounts are physically transferred in their totality into a nominated account each time the sub-account balances reach a predetermined threshold.

### General market practice

#### For residents:

Domestic cash concentration techniques are the main method of liquidity management in India.

A cash concentration structure can include accounts held in the name of different legal entities; however, all participants must have the same beneficial ownership and the structure must comply with limits on inter-company borrowing levels.

#### For non-residents:

Non-resident bank accounts may participate in a cash concentration structure.

Banks may apply lifting fees on transfers between resident and non-resident accounts. For larger companies, the level of any fees applied will be negotiable.

Non-residents may have to pay a withholding tax on interest payments.

## Cross-border sweeping

A cross-border sweep is used to concentrate funds held in accounts in different jurisdictions into one liquidity centre\*. A system for accounting, reporting and payment in accordance with the respective national accounting standards of the countries involved in the sweeping arrangement has to be put in place.

\* Care: a cross-border sweep can create an intercompany loan, which for certain countries will trigger corporate withholding tax.

### General market practice

#### For residents and non-residents:

Resident and non-resident companies are permitted to participate in cross-border sweep structures. However, India is rarely chosen as a popular location for regional and global cash concentration header accounts.

Resident and non-resident companies must comply with Indian foreign exchange controls and will usually be liable to pay a withholding tax on any intercompany loans which arise.

## Notional pooling

Notional pooling is a process of creating a single cash position without physically moving funds from one account to another or any co-mingling of funds held in different bank accounts. The bank applies interest on the structure's net balance, rather than on the individual bank account balances.

Some countries restrict notional pooling to bank accounts held in the name of the same legal entity. Others permit bank accounts held in the name of different group entities to participate in the same notional cash pool.

### General market practice – Single entity

#### For residents:

Notional pooling is not permitted in India.

#### For non-residents:

Notional pooling is not permitted in India.

### General market practice – Multiple entities

#### For residents:

Notional pooling is not permitted in India.

#### For non-residents:

Notional pooling is not permitted in India.

## Lifting fees

A lifting fee is a charge associated with the resident/non-resident movement of funds calculated as a percentage of the transaction value.

### General market practice

Lifting fees may be applied on transfers between resident and non-resident accounts.

## Taxation

A company is resident in India in any tax year, if it registered under the Indian Companies Act 1956, other specified Acts/laws or during the relevant tax year the control and management of its affairs were situated wholly in India.

The corporation tax year is based on earnings during the financial year ending 31 March. Companies are required to pay advance corporation tax in four quarterly instalments, on the basis of the anticipated liability for the relevant year, starting from 15 days before the end of the first quarter of the relevant financial year.

## Withholding tax (subject to tax treaties)

Payments to:	Dividend*	Interest**	Royalties	Fee for technical services	Long-term capital gain	Short-term capital gain	Other incomes
Where total income including capital gains exceeds INR 10 million:							
Resident companies	Nil	10.815%	10.815%	10.815%	NA	NA	†
Non-resident companies	Nil	21.012%††	10.506%‡	10.506%	Sale subject to STT - Nil Sale not subject to STT - 21.012% Sale of unlisted securities -10.506%	Sale subject to STT - 15.759% Sale not subject to STT - 40% plus surcharge and cess	42.024%
Where total income including capital gains does not exceed INR 10 million:							
Resident companies	Nil	10.30%	10.30%	10.30%	NA	NA	†
Non-resident companies	Nil	20.60%††	10.30%‡	10.30%	Sale subject to STT - Nil Sale not subject to STT - 20.60% Sale of unlisted securities -10.3%	Sale subject to STT - 15.45% Sale not subject to STT - 40% plus surcharge and cess	41.20%

\* On dividends distributed by a domestic company on which dividend distribution tax is paid/payable.

\*\* Other than interest on securities.

† Variable, depending on nature of income.

†† In respect of interest on foreign currency loans.

‡ In respect of agreements entered into before 1 June 2005, the applicable rate of tax is 21.012%. The above rate is subject to the fact that the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy of the Government of India, the agreement is in accordance with that policy.

Lower rates as prescribed in tax treaties would be used wherever applicable.

## Tax treaties / tax information exchange agreements (TIEAs)

India has double tax agreements in force with several countries that allow qualifying companies the benefit of reduced rates of withholding tax and the mitigation of double taxation. The law specifically provides that tax treaties override local tax law wherever they are more beneficial.

The Finance Act 2012 provides that tax treaty benefits are only available if a tax residency certificate in a specified format is obtained from the government of the country of residence.

Specific measures were introduced with regard to unaccounted monies outside India of resident Indians.

India has notified TIEAs with five jurisdictions.

## Customs duty

Customs duty is levied on the import of goods into India. The rate of duty applicable to the goods depends on their customs tariff classification. In addition to the basic customs duty, countervailing duty (CVD) and special additional duty (SAD) are also levied on such imports. The mean rate of duty is 26.85% (inclusive of CVD, SAD and Cess). There are special provisions governing import of goods from associated enterprises.

## Excise duty

Excise duty is payable on the manufacture of excisable goods in India. The rate of duty applied to a product depends on its excise tariff classification. The duty is normally levied on the transaction value and in specified cases on the retail sales prices. The mean rate of excise duty is currently 12.36% (inclusive of cess).

A credit mechanism is available to avoid the cascading effect of central excise duty.

## Value added tax (VAT) / central sales tax (CST)

VAT is a state levy and applies to the sale of goods within the state. Each state has its own VAT legislation applicable to intra-state transactions. While the mean rate of VAT is 12.5% various states have increased this rate. However, other rates such as 5%, 4%, 1% and zero also exist for some products. As a multi-point tax, VAT has its own credit mechanism to avoid the cascading effect.

CST is a central levy and is applicable on inter-state sales. The rate of CST is 2%, subject to the fulfilment of specific conditions. In cases where the conditions are not fulfilled, the rate applicable in the state of sale to such goods is applied.

## Corporate taxation

Domestic companies are liable to tax at a rate of 32.445% and foreign companies at a rate of 42.024% on all business income, where income during the financial year exceeds INR 10 million. If income does not exceed INR 10 million, the relevant tax rate is 30.9% for domestic companies and 41.2% for foreign companies. A foreign company is one which has an office in India and is required to file its accounts in India under the Indian Companies Act 1956.

Residents of India are taxed on their worldwide income. A non-resident company is chargeable to tax on the income derived from Indian sources.

A corporate dividend tax of 16.22% is payable by a domestic company on dividends declared. Dividends are tax exempt in the hands of the shareholder.

A minimum alternate tax is payable by a company if the income tax payable on the total income for the assessment year commencing on or after 1 April 2011 is less than 18.5% of its book profit. In this circumstance the book profit is deemed to be the total income, and tax payable on such total income is 18.5% of the income tax rate. The 18.5% rate is increased by applicable surcharges and an education cess, resulting in the minimum alternate tax rate rising to 19.055% if the income of the domestic as well as foreign company is INR 10 million or less and 20.00775% if the income of the domestic company exceeds INR 10 million and 19.4361% if the income of the foreign company exceeds INR 10 million.

## Financial instruments


Generally, income from the sale of financial instruments is taxed as business income or capital gains depending on the facts of the case.

The domestic tax laws provide that a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by actual delivery or transfer of the commodity or scrips is treated as a 'speculative transaction'. However, one exception to this rule is an eligible transaction in respect of trading in derivatives carried out on a recognised stock exchange. An eligible transaction is a transaction carried out on a screen-based electronic system through a recognised intermediary and such transaction is supported by a time stamped contract note issued by the intermediary. Accordingly, transactions in options, futures, etc. which do not satisfy the condition for the exception are regarded as 'speculative transactions'. Any loss from speculative transactions can be set off only against speculative gains; not against any other source of profits.

## Interest and financing costs

There are no specific anti-avoidance rules pertaining to the deductibility of interest and other financing costs.

Under domestic law, interest costs incurred for capital borrowed and utilised for non-business purposes are not allowed as a deduction for computing business income.



Certain income such as dividends received from an Indian company is exempt from tax in the hands of the shareholder. The interest expense incurred by the shareholder on loans used for the purpose of making such investments which yield exempt income is disallowed on a pro-rata basis in accordance with a prescribed formula.

Income of foreign companies and other non-residents derived from interest arising on monies lent in a foreign currency from a source outside India to Indian companies between 1 July 2012 and 1 July 2015 is taxable at a rate of 5% (plus applicable surcharge and education cess) under an agreement approved by the central government. This benefit will be available to borrowings by all Indian companies. Interest paid on the issue of long-term infrastructure bonds will also be eligible for this benefit.

## Foreign exchange

Under Indian GAAP, monetary items held in a foreign currency need to be converted into Indian rupees by applying the conversion rate at the end of the year. Based on the court rulings, any gain or loss on such conversion is credited/debited to the revenue account (if the underlying transaction is on revenue account) or adjusted in the cost base of the asset (if the underlying transaction is on capital account).

Gains or losses credited/debited to the revenue account in accordance with a consistent method of accounting are considered as income/losses for tax purposes as well. However, unrealised gains/losses arising on capital account transactions and adjusted to the cost base of the assets in accordance with a consistent method of accounting are not allowable for tax purposes. Under the Indian tax laws, gains or losses arising only at the time of actual payment of foreign currency liabilities that have been incurred to acquire an asset are allowed to be adjusted in the actual cost base of the asset.

Taxable profits and liabilities are expressed in Indian rupees. Specific rules exist for converting foreign currencies into Indian rupees.

## Income from other sources

The Finance Act 2012 provides that consideration received from a resident taxpayer for the issue of shares by a closely held company at a premium (in excess of fair market value (FMV) of the shares) is chargeable to tax as income from other sources. FMV will be the higher of:

- (i) the value as per a prescribed method; or
- (ii) the value as substantiated by the company to the satisfaction of the tax authorities based on the value of its assets (including intangible assets) on the date of issue of the shares.

This provision does not apply to a venture capital undertaking (VCU) receiving consideration from a venture capital company (VCC) or a venture capital fund (VCF) and notified persons.

## Transfer pricing

The income earned or expenses incurred by a company from an international transaction with an associated enterprise should be at arm's length for the purposes of income tax. The transfer pricing regime is influenced by OECD norms, although the penalty provisions are much more stringent.

The law requires the company subject to tax to maintain prescribed information and documents.

The provision also requires the company subject to tax to obtain a certificate (in the prescribed format) from a chartered accountant disclosing the details of the international transactions with associated enterprises, along with the methods applied for benchmarking. Such certificate is required to be submitted to the tax authorities by the due date of filing of the tax return.

The Finance Act 2012 includes two major changes to the Indian transfer pricing regime, specifically:

- introduction of advance pricing arrangements (APAs) and;
- application of transfer pricing provisions to specified domestic transactions if the value of such transactions in aggregate exceeds INR 5 crore.

## Thin capitalisation

There are no thin capitalisation rules under current domestic tax law in India.

## Capital gains tax

Capital gains are calculated and taxed based on the holding period of the capital assets. Based on the holding period, assets are classified into long-term assets and short-term assets.<sup>3</sup> Short-term assets are:

- Shares, specified listed securities and units held for not more than 12 months immediately preceding the date of the transfer; and
- Other assets: held for not more than 36 months.

Assets other than short-term assets are considered to be long-term assets.

Gains are computed with reference to the sales price and cost. In the case of long-term capital assets, cost is normally indexed with reference to the Cost Inflation Index.

Special provisions exist governing the computation of capital gains in respect of shares or debentures acquired in a foreign currency by non-residents.

Long-term capital gains, other than shares, securities, etc., are taxed at the rate of 21.012% in the case of non-resident companies and 21.63% in the case of domestic companies. However, if the income of a domestic company or foreign company during the financial year does not exceed INR 10 million, a tax rate of 20.60% is levied for both domestic companies as well as foreign companies. The short-term capital gains are taxed at the normal income tax rates.

Long-term assets that are listed securities not sold on stock exchanges attract a maximum tax of 10.815% in the case of domestic companies and 10.506% in the case of non-resident companies on the gain without indexation. However, there have been judicial rulings that have applied a tax rate of 21.012% (rather than 10.506%) in the case of non-resident companies. Therefore litigation on this point is not ruled out. Short-term capital gains on the sale of securities in the case of resident companies are taxable at the rate of 30% plus surcharge and cess, while in the case of non-resident companies at the rate of 40% plus surcharge and cess thereon.

The Finance Act 2012 provides that long-term capital gains arising to foreign companies and other non-residents on the sale of unlisted securities will be taxed at 10% (plus applicable surcharge and education cess) instead of the existing rate of 20%. However, the benefit of indexation will not be available and the requirement of computation of gains in foreign exchange will not apply.

Shares, securities etc. sold on the stock exchange attract security transaction tax (STT) of between 0.017% and 0.20% of the value of the sale/purchase price of the shares etc. Short-term capital gains on such assets are subject to tax at 15.759% in the case of non-resident companies, and 16.2225% in the case of domestic companies. However, if the income of a domestic company or foreign company during the financial year does not exceed INR 10 million, a tax rate of 15.45% is levied for both domestic companies as well as foreign companies. No tax is levied on long-term capital gains relating to such sale through a recognised stock exchange on which STT is paid in respect of equity shares and units of an equity oriented mutual fund.

The sale of unlisted equity shares under an offer for sale to the public included in an IPO, where the shares are subsequently listed on a recognised stock exchange, will be liable to STT at a rate of 0.20% of the sale price; the STT liability has to be discharged by the seller. The lead merchant banker will be responsible for collecting the STT from every person who tenders the shares and must comply with the STT compliance and filing requirements. Consequently, the seller will not be liable to pay long-term capital gains tax if the shares have been held for more than 12 months; otherwise the seller will have to pay short-term capital gains tax at the rates noted above.

The scope of deemed income (as modified by the Finance Act 2012) is to include income from the transfer of shares or an interest in a company/entity registered or incorporated outside India if the shares or interest derives its value, directly or indirectly, substantially from assets located in India. The term 'property' as used in the definition of a capital asset will include any rights of management or control or any other rights whatsoever in relation to an Indian company.

Foreign companies which invest in India through the Foreign Institutional Investor registration have a special provision for taxation whereby long-term capital gains are taxed at a rate of 10%, while short-term capital gains are taxed at a rate of 30%. The rate of tax is further increased by the surcharge and cess.

To summarise:

	Resident company	Non-resident company (other than FII)	Non-resident company registered as FII
<b>Sale of equity shares and units of equity oriented mutual fund through the recognised stock exchange subject to STT</b>			
Long-term capital gains	Exempt	Exempt	Exempt
Short-term capital gains	15%	15%	15%
<b>Sale of equity shares and units (not subject to STT) and listed securities</b>			
Long-term capital gains	20%/10% (without indexation)	20%/10% (without indexation and without currency fluctuation)	10%
Short-term capital gains	30%	40%	30%
<b>Sale of securities other than above</b>			
Long-term capital gains	20%	20%	10%
Short-term capital gains	30%	40%	30%

The rate of tax mentioned above will be increased by the applicable surcharge and cess.

Capital losses can only be set off against the capital gains in the current period, or carried forward for a period of up to eight financial years to be offset against capital gains. However, long-term capital losses can only be set off against long-term capital gains.

Subject to specific conditions, long-term capital gains are exempt from tax if the sale proceeds including capital gains are reinvested in specified types of assets within a stipulated time period.

The buy-back of shares by a company is subject to capital gains tax in the hands of the shareholders.

## Cash pooling

India does not have specific tax rules that apply to cash pooling arrangements. As notional cash pooling is not available, cash pooling involves the actual physical transfer of funds. Cash pooling tax issues that may need to be considered include deemed dividends and the application of transfer pricing rules to domestic transactions.

## Advance rulings

The Customs Act, the Central Excise Act and service tax legislation provide for advance rulings in which the authorities can determine a question pertaining to law or fact specified in the application with respect to a proposed transaction. The applicant must be a non-resident or a resident having a joint venture with a non-resident or an Indian subsidiary of a foreign holding company.

The VAT legislation of some states also contains provisions furthering the objectives of advance rulings.

## Financial transactions / banking services tax

Financial transactions such as lending, bill discounting and financial leasing are subject to service tax. However, tax is generally applicable on the upfront fees, processing charges and other service charges levied by the bank or financial institutions but excluding the interest element. However, since service tax is a transaction-based tax, it is important to evaluate transactions to determine the indirect tax implications.

## Service tax

Service tax applies to around 120 categories of services. It is a central levy.

Service tax is currently levied at 12.36% (inclusive of cess) on the provision of specified services. The legislation provides rules for determining when services can be said to have been exported outside India or received in India from outside India. While services exported outside India can be provided without payment of service tax, in the case of services received in India from outside India the recipient of the service is liable to pay service tax under the reverse charge mechanism.

A CENVAT (central value added tax) credit mechanism, subject to fulfilment of certain conditions, is available to avoid the cascading effect of service tax.

The Finance Act 2012 has made major amendments to service tax:

- New rate brackets for services in relation to the purchase and sale of foreign currency including the exchange of money.
- Invoices for taxable services provided by banks have to be issued within 45 days of the provision of taxable services.
- A negative list of services covers specified services related to financial services.

A separate definition of 'interest' excludes service fees or other charges in respect of monies borrowed, debt incurred, or any unutilised credit facility.

The definition of 'service' (specifically 'transaction in money') does not include any activity relating to the use of money or its conversion into cash or by any other mode from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.

## Stamp duty

Financial instruments and transactions in India attract stamp duties that are levied under the Indian Stamp Act and the stamp acts of the various states; however, these vary significantly from state to state. The transfer of specific securities to and from a depository is not liable to stamp duty.

## Advance tax ruling availability

Advance rulings from the Authority for Advance Rulings are permitted in respect of transactions undertaken, or proposed to be undertaken, by non-residents.

A resident company may approach the Authority in relation to any transaction undertaken, or proposed to be undertaken, by the resident with a non-resident.

The Authority may be approached in respect of an issue relating to the computation of total income which is pending before any income-tax authority or the Appellate Tribunal. The determination or decision by the Authority includes the determination or decision of any question of law or of fact relating to the computation of total income.

Advance rulings are binding for both the applicant and the revenue authorities.

## Tax collection at source

The Finance Act 2012 provides that sellers of bullion shall collect tax at 1% of the sale consideration from every buyer if the sale consideration in cash exceeds INR 2 lakhs, and in the case of the sale of jewellery, in excess of INR 5 lakhs. Coins and any other article weighing 10 grams or less are excluded.

## General Anti-Avoidance Rules (GAAR)

The Finance Act 2012 introduces GAAR with effect on 1 April 2013. The GAAR provisions may override tax treaties to prevent treaty abuse and bring certain cross border transactions within the scope of the tax rules.

The GAAR may declare an arrangement entered into by a taxpayer an 'impermissible avoidance arrangement'. The consequences of an impermissible avoidance arrangement may include:

- disregard of the arrangement or part thereof;
- recharacterisation of any step;
- disregard of any corporate structure;
- denial of benefits under a tax treaty.

The onus of proof is on the Revenue Department before any action can be initiated under the GAAR.

An advance ruling can be obtained to determine whether the GAAR provisions apply to a proposed arrangement.

Supplied by Deloitte Touche Tohmatsu, 1 June 2012.  
For more information please visit [www.deloitte.com](http://www.deloitte.com).

## Payment Instruments

### General overview and trends

Cash remains the predominant payment method for retail transactions in India.

The majority of the value of cashless payment instruments are paper-based, with credit transfers and cheques being the dominant method. More recently, there has been an increase in the use of card-based transactions for retail payments, and, despite a small fall in the number of transactions during 2011, debit cards make up the majority of the volume of cashless payments in India.

## Indicators of use of various cashless payment instruments

	Transactions (million)		% change	Traffic (INR billion)		% change
	2010	2011	2011 / 2010	2010	2011	2011 / 2010
Cheques	1,387.4	1,341.9	- 3.3	101,341.3	99,012.1	-2.3
Debit card payments	4,476.4	4,447.4	- 0.6	11,323.1	11,903.2	5.1
Credit card payments	225.9	266.4	17.9	766.0	806.0	5.2
Credit transfers	299.4	403.2	34.7	688,380.5	743,123.9	7.9
Direct debits	156.7	164.7	5.1	736.5	833.6	13.2
<b>Total</b>	<b>6,545.80</b>	<b>6,623.60</b>	<b>1.2</b>	<b>802,547.40</b>	<b>855,678.80</b>	<b>6.6</b>

Source: CPSS Red Book statistical update, September 2012.

## Electronic payment instruments

### Domestic

#### Credit transfers (electronic payments)

In 2011 credit transfers in India continued to increase sharply with over 403.2 million effected. The total value of credit transfers for 2011 was worth over INR 743,123.9 billion, an increase of 7.9% on the previous year. Credit transfers accounted for just 6.3% of the total volume of non-cash payments processed in 2011. This represents a slight increase in their share of the volume of cashless payment instruments in India over the past few years. However, credit transfers share of the value of cashless payment instruments has increased more dramatically in recent years, rising to 86.8% of the total value of all cashless instruments in 2011.

#### High-value / urgent

##### Clearing details

High-value payments are processed through the Reserve Bank of India's RTGS system. Payments are settled on a first-in, first-out basis, either in real time or within two hours depending on the location of the remitting and beneficiary banks. Since 1 August 2008, all payment transactions of INR 10 million and above must be routed through an electronic payment system.

#### Low-value / non-urgent

Bulk electronic credit transfers are used for salary and pension payments. One-to-one, low-value credit transfers are also available.

##### Clearing details

Bulk electronic credit transfers are processed through the credit element of NECS and are settled on a D+1 basis.

One-to-one electronic credit transfers are processed through NEFT. Payments are processed for same or next-day value, depending on the location of the remitting and beneficiary banks.

## Direct debits

Direct debits are becoming more important, although they still represent a relatively small number of payments overall. In 2011 direct debits accounted for 2.5% of the total volume of non-cash payments and less than 0.1% of the total value.

They are used by retail consumers and small businesses primarily for regular payments, such as rent, utility bills and insurance premiums. Payments can be initiated on both an intra- and interbank basis, but only once a signed authorisation is in place.

### Clearing details

Direct debits are processed through the debit element of the NECS system. Payments are usually settled on a D+1 basis.

## Payment cards

Both credit and debit card usage has greatly increased in the past decade. There are currently 18.6 million credit cards and 291.5 million debit cards in circulation in India.

Credit cards accounted for 4.0% of the volume and 0.1% of the value of all domestic cashless payments in 2011. Despite a small decline in their usage during 2011, debit cards accounted for 67.1% of the volume of all domestic cashless payments in 2011. Due to the low-value nature of their usage debit cards contributed just 1.4% of the value of cashless payments in the same year, an increase from the previous year. Card payments are predominantly retail oriented but are also used for salary and utility bill payments.

RuPay, a domestic payment card scheme, has been established by the National Payments Corporation of India LTD (NPCI), the operator of India's National Financial Switch (NFS) ATM network. RuPay debit cards were first launched as part of a pilot project in March 2012.

Since July 2009, card holders in India have been able to withdraw cash from all of the 661,000 point of sale (POS) terminals currently in operation across the country.

### Clearing details

Payment card transactions are processed by the NECS system. Payments are settled on a same-day basis.

## Electronic money

There is growing use of electronic money schemes in India. The Payment and Settlement Act 2007, which came into effect from 12 August 2008, placed entities issuing prepaid cards under the regulatory control of the Reserve Bank of India, which has so far granted approval for 39 banks and 20 non-banks to issue some kind of prepaid e-money card. At the end of 2011, there were 107.4 million prepaid e-money cards in India. All prepaid cards have a maximum value threshold of INR 50,000.

## Cross-border

### Clearing details

Foreign currency cross-border payments from India are restricted by the country's exchange control regime.

Most outgoing cross-border payments are made in the form of a foreign currency demand draft or via SWIFT. Most payments are cleared using correspondent banking relationships.

Some banks have access to the TARGET2 system or the Euro Banking Association's (EBA) EURO1 system via their international networks.

Low-value electronic transfers are mainly cleared via the banks' own correspondent banking network. Some banks have access to the EBA's STEP1 and STEP2 systems via their international networks.

## Cheque and paper instruments

### Cheques

Cheques are a common form of cashless payment in India in terms of both volume and value, despite a recent fall in their usage in India. In 2011, they represented 20.3% of the total volume and 11.6% of the total value of all cashless payments.

#### Clearing details

In February 2008 a cheque truncation pilot scheme (CTS) was launched in Delhi and this scheme has now been rolled out to the Chennai area, as well as the states of Tamilnadu, Kerala, Karnataka, Andhra Pradesh and the Union Territory of Puducherry. Cheques in these areas are no longer cleared via MICR-based cheque processing. They are now cleared by CTS image exchange, to decrease clearing times to D+0. The scheme will be rolled out nationally by June 2013, discontinuing all MICR-based cheque clearing in India. From this point cheques will be processed across four national grids, which together will cover the whole of India, removing the need for in excess of 1,150 individual clearing houses that currently operate throughout India.

During 2010 a High Value Clearing system for cheques with a value in excess of INR 100,000 was also discontinued to help encourage the take-up of CTS.

Cheques not currently cleared by CTS are settled via the MICR process, which truncates cheques into electronic items before clearing. For local cheques (between banks in the same city), the clearing process gives value on D+2.

For cheques not processed via either CTS or MICR, or that are processed between banks in different cities, the clearing process can take much longer. Most non-MICR or CTS cheques are processed within five to ten days, although it can take up to three weeks to process cheques between banks in two remote locations.

A 'Speed Clearing' service has been introduced by the Reserve Bank of India for the clearing of cheques that are issued and cashed in separate cities (outstation cheques). Currently operating in 17 cities throughout India, cheques cleared through 'Speed Clearing' are treated as local cheques rather than outstation cheques and take between one and two working days to be processed.

## How Companies Pay & Receive

### Key summary

Cheques are the most popular form of payment used by Indian companies.

### How companies make payments

#### Vendors / suppliers

##### General market practice

The use of cheques to pay suppliers is normal practice. Electronic transfers, effected through RTGS and NEFT, are increasingly widely used. Direct debits are also increasingly used to make regular payments such as rent and utility payments.

#### Tax / social security

##### General market practice

Credit transfers remain the most popular method of payment for pensions, tax and social security benefits in general. A centralised electronic benefit transfer payment system has recently been established by the NPCI. The Aadhaar Payments Bridge System (APBS), which is currently in the pilot stage, links banks to various government departments to distribute financial benefits via electronic credit transfer. Currently the Union Bank of India, Bank of India and ICICI Bank participate in the system.

## Payroll

### General market practice

Bulk payroll payments can be made by electronic credit transfer. Cheques are also used.

## Treasury settlements

### General market practice

Treasury settlements are usually paid by electronic credit transfer.

## How companies receive payments

### From consumers / small companies

#### General market practice

In the case of retail services, card and, for very small payments, cash payments are common. Cheques are also used. Payments from other companies are usually received via cheque or NEFT transfer.

### From other companies

#### General market practice

The use of cheques is high, although credit transfers are becoming more common.

## Summary of payment methods

	Physical presence	Remote payment	Regular payment	One-off payment	Usage		Transactions in 2011 (million)	% of total number of transactions
					Consumer	Companies		
Cheque	✓	✓	✓	✓	I	I	1,341.9	20.2
Debit / Credit card	✓	N		✓	I	M	4,713.8	71.2
Credit transfer		✓	✓	✓	I	I	403.2	6.1
Direct debit		✓	✓	✓	S	M	164.7	2.4
Card-based e-money	✓	✓	✓	✓	M	S	NA	
Total							6,623.60	

I: important usage  
M: moderate usage  
S: seldom used  
N: at the moment essentially used through non-secure communication of the card number  
N/A: not available

Source: CPSS Red Book statistical update, September 2012.

# Clearing Systems (including interface with cross-border systems)

## Overall structure(s)

India has a number of different payment clearing systems. As well as an RTGS system for high-value electronic payments, there are a number of low-value electronic clearing systems and a paper-based clearing system. The Reserve Bank of India is implementing the national rollout of a cheque truncation system (CTS) which, when fully implemented nationwide by June 2013, will result the replacement of the current MICR-based cheque clearing in favour of same-day settlement for cheques. The CTS pilot scheme was launched in Delhi in February 2008, and all member banks of the New Delhi Bankers' Clearing House now participate in CTS. The scheme has also been rolled out in the Chennai area and some surrounding states.

Electronic payments can be processed through NECS (National Electronic Clearing Services) and NEFT (National Electronic Funds Transfer).

## Electronic clearing systems

### High-value / urgent

**RTGS** The Reserve Bank of India has operated the national Real-Time Gross Settlement (RTGS) payment system since March 2004. At present, there are 130 participant banks in the RTGS system. Nationwide, the RTGS system is addressable at 88,349 branches in over 20,000 towns and cities. All participant banks have to maintain accounts with the Reserve Bank of India.

The RTGS system processes high-value and urgent electronic credit transfers. There is a minimum payment value of INR 200,000.

During the 2011-12 fiscal year, India's RTGS system processed 55.04 million transactions worth a total value of INR 1,079,623.07 billion. This represents an increase of 11.7% in volume and 14.7% in value on the previous fiscal year.

The RTGS operates from 09:00 to 18:00 on weekdays and to 14:00 on Saturdays, with customer cut-off times of 16:30 on weekdays and 13:30 on Saturdays and interbank cut-off times of 18:00 on weekdays and 15:00 on Saturdays.

Each individual payment is processed immediately on a first-in, first-out basis. Payments are processed with immediate finality. Depending on the locations of the remitting and beneficiary banks, payments can take up to two hours to be finally settled.

### Low-value / non-urgent

**National Electronic Clearing Services (NECS)** NECS operates a deferred net settlement system, which processes both credit and debit payments. NECS is a batch processing system, meaning payments are processed at predetermined points during the day.

NECS is divided into two elements: ECS Credit and ECS Debit. Credits can be submitted as both individual and bulk electronic payments, whereas the ECS Debit element only processes individual payments. In both cases, there is no maximum payment value threshold.

During 2008 NECS was upgraded to give national coverage in India. Payment instructions are now made through a single, central location in Mumbai, enabling a clearing cycle of D+1 for both credit and debit payments, as opposed to the previous D+3 cycle.

**National Electronic Funds Transfer (NEFT)** NEFT is a deferred net settlement system. NEFT replaced SEFT in 2006 and EFT in 2008, although EFT is still being used to process some government payments.

Payments are processed in batches during the day, with eleven hourly settlements between 09:00 and 19:00 on weekdays and five hourly settlements between 09:00 and 13:00 on Saturdays. Once a payment is processed, it is cleared within two hours.

Payments are submitted individually. There are usually no minimum or maximum value thresholds, with the exception of cash-based remittances and individual transfers to Nepal, which are restricted to INR 50,000.

There are 114 NEFT participant banks, reaching 86,449 bank branches nationwide.

Payments processed through NEFT are settled on either a same or next-day basis, depending on the location of both participating banks.

## Paper-based systems

**MICR** Most cheques are currently processed using India's Magnetic Image Cheque Recognition (MICR) software, which allows cheques to be truncated into electronic items before being processed for settlement. At present, 66 clearing houses have the capabilities to process MICR cheques and 83.1% of the volume and 81.0% of the value of cheques were processed using the MICR software during 2011-12.

The Reserve Bank of India found that conversion of the remaining non-MICR cheque processing centres into MICR centres was not viable and subsequently decided to invest in greater computerisation and the implementation of the Magnetic Media-based Clearing System (MMBCS) at the major non-MICR centres. Around 99.3% of all clearing houses are now computerised, allowing for cheque settlement to be processed electronically, although non-MICR instruments are still sorted manually.

Both the MICR and non-MICR systems are deferred net settlement systems. Neither applies a minimum or maximum payment value threshold.

Cheques processed using MICR are settled for value in D+2 days; non-MICR processed cheques take between five and ten days to settle.

In order to improve the efficiency of the paper-based clearing system, the Reserve Bank of India has also decided to undertake the implementation of a cheque truncation system (CTS). When implemented nationwide by June 2013, the CTS will enable cheque clearing on the same day as presentation. CTS's implementation nationwide will result in the closing of the more than 1,150 individual MICR clearing houses currently in operation in India in favour of four large cheque clearing grids, covering the whole of the country. The CTS was first piloted in Delhi in February 2008 and has since been rolled out in Chennai and surrounding areas.

In order to encourage the transition towards CTS during 2010, the Reserve Bank of India discontinued a High Value Clearing deferred net settlement payment system for local cheques with a value of at least INR 100,000. High value cheques in areas that do not yet have CTS can be presented for MICR clearing.

## Electronic Banking

### Existing and future trends

Electronic banking is growing in popularity in India. Its availability has widened, especially in the larger cities. However, the state of the communications infrastructure has inhibited growth beyond these areas. Several banks do offer some form of internet banking, although internet penetration measured just 10.2% of the population at the start of 2012.

### Usage by companies

Electronic banking is offered through proprietary bank systems, as there is no electronic banking standard in India. Access to these systems and usage of them depends on the location of the companies themselves and the quality of infrastructure links between their various operations.

NEFT uses the Structured Financial Messaging System (SFMS), similar to the SWIFT messaging format and the RBI is in the process of developing RTGS message format to an XML-based messaging system conforming to internationally accepted standards.

### Market practice

The available services vary among banks. They include a range of payment and collection services, transaction initiation and balance and transaction reporting. Users can access electronic banking through a variety of channels, including ATMs, the internet and mobile phones. The NPCI recently launched a national real-time interbank electronic fund transfer facility for mobile payments. The Interbank Mobile Payment Service (IMPS) uses the NPCI's National Financial Switch (NFS) to enable mobile fund transfers to be made instantly in real-time 24 hours a day, seven days a week. Fifty banks currently participate in IMPS, serving approximately 13 million mobile banking subscribers across India.

## Internet banking

Internet banking is increasingly available to companies in India. All the major banks offer some form of internet banking which generally includes next-day or same-day domestic and international balance and transaction reporting, as well as some form of domestic and international transfer capability.

A new standard, IDEAL, has been developed for one-off online payments. It allows consumers to pay for internet purchases via a direct payment order.

Electronic invoice presentment and payment technology is offered by some banks. This allows companies to receive invoices online, interrogate them and then to pay their suppliers.

## Trade Finance

### Overview of trade agreements with other countries

India is a participant in the South Asian Association for Regional Cooperation (SAARC). Its other members are Pakistan, Bangladesh, Sri Lanka, Nepal, Bhutan, Maldives and, since 2007, Afghanistan.

With the SAARC countries, India has signed the South Asia Free Trade Agreement (SAFTA), which aims to reduce tariffs on most goods traded between member countries to 0% by 2016.

India has signed a free trade agreement (FTA) with the Association of Southeast Asian Nations (ASEAN). ASEAN member nations include Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

India signed an FTA with Japan in February 2011, committing both sides to the abolition of 94% of trade tariffs in the next decade.

India is also in talks with Bangladesh, Chile, Indonesia, the EU, South Africa Customs Union (SACU), the Gulf Cooperation Council (GCC), Australia, New Zealand, Israel, Panama and Colombia. Some of these FTA's are expected to be completed during 2012.

### General trade overview including any government policy

The Indian government has been pursuing an active export support programme. The 2004-09 Foreign Trade Policy targeted a 100% increase in India's share of world merchandise trade. In April 2008, the Ministry of Commerce and Industry announced that the target was achieved in 2007-08, one year ahead of schedule, and set a new target of increasing India's share of global trade by 300% to 5% by 2020. However, despite some liberalisation in recent years, the government continues to apply some bureaucratic controls on imports and exports. Since 2000, India has had a network of special economic zones in which export-promoting companies can be foreign owned. Outside these 158 zones, there are still restrictions on the level of foreign ownership of Indian companies.

## Imports and exports

	Goods		Services		Income	
Figures for 2011	USD million	% of GDP	USD million	% of GDP	USD million	% of GDP
Imports / debits	461.7	27.8	78.7	4.7	28.0	1.7
Exports / credits	299.4	18.0	137.3	8.3	10.0	0.6
Balance	- 162.3	- 9.8	+ 58.7	+ 3.5	- 17.9	- 1.1

Source: IMF International Financial Statistics, September 2012.

## Main trading partners for imports & exports

**Imports** (European Union 12.1%), China 11.8%, United Arab Emirates 8.8%, Switzerland 6.3%, Saudi Arabia 5.8%.

**Exports** (European Union 18.8%), United Arab Emirates 12.4%, United States 10.7%, China 7.9%, Hong Kong 4.3%.

Source: WTO April 2012.

## Main traded products / sectors – share of total imports and exports

**Imports** Manufactures 33.4%, fuels and mining products 29.1%, commercial services (excl. travel and transportation) 12.7%, transportation 10.0%, agricultural products 4.1%, travel 2.3%.

**Exports** Manufactures 40.9%, commercial services (excl. travel and transportation) 28.0%, fuels and mining products 16.3%, agricultural products 6.9%, travel 4.1%, transportation 3.8%.

Source: WTO, April 2012.

## Documentation requirements for imports and exports

For the importation of goods with a value in excess of USD 100,000 requiring payment in foreign currency, supporting documentation is required. If the goods have a value of less than USD 1 million, this can take the form of either a bill of entry or, if the importer is listed on the National Stock Exchange of India with a net worth above INR 1 billion, a certificate of confirmation (from the CEO or auditor of the company).

The export of goods and software with a value of USD 25,000 and above must be declared.

## Licence requirements for imports and exports

The importation of certain goods requires an import licence, which is available from the Director General of Foreign Trade.

Licences are required for the export of certain restricted items (including some textiles, animals and animal parts, seeds and silk worms, food industry waste and special chemicals).

## Taxes, tariffs and other fees on imports and exports

India applies import duties on a wide range of imported goods at various rates ranging from 2% to 10%. Many capital goods can be imported duty free under the terms of the Duty Free Credit Entitlement Certificate and the Export Promotion Capital Goods Scheme.

Duties are applied on the export of certain animal skins, leathers and hides.

## Country export credit agency

The Export Credit Guarantee Corporation of India (ECGC) is a state-controlled export credit agency which insures export supplier credit, export buyer credit, letters of credit, credit for pre-export financing, outward investment and its financing and insures bank guarantees related to export contracts against political or commercial risks.

The ECGC operates under the administrative control of the Ministry of Commerce and Industry in the Indian Department of Commerce.

The ECGC is a member of the Berne Union or, officially, the International Union of Credit & Investment Insurers (a leading international organisation for export credit and foreign investment insurers).

Export credit and other finance is also available from the Export-Import Bank of India, which was established in 1982. It is wholly owned by the Indian Government.

Neither imports nor exports are subject to financing requirements.

## Export credit programmes

The Indian government has 153 special economic zones in which exporters will enjoy tax reductions and holidays for up to 15 years.

A Duty Entitlement Pass Book scheme, allowing exporters to neutralise the impact of any import duties on the export price of certain goods, was discontinued on 1 October 2011 to make India's trade policy more compliant with international best practices.

## List of prohibited imports / exports

Certain items (including tallow, animal fat, rennet, wild animals and ivory) are prohibited from being imported into India.

The import of certain other goods (including certain precious and semi-precious stones; seeds, plants and animals; drugs, chemicals and pharmaceuticals) is restricted.

Certain exports are prohibited in accordance with UN Security Council resolutions and other international treaty obligations.

## Glossary

<b>EFT</b>	Electronic Funds Transfer, a payment clearing system for low-value electronic credit transfers.
<b>FEMA</b>	Foreign Exchange Management Act, the legislation which governs Indian foreign exchange regulations.
<b>HVC</b>	High Value Clearing system, which processes high-value paper-based payment instruments.
<b>IDEAL</b>	Integrated Direct Electronic Access Link, an internet-based electronic banking application.
<b>IMPS</b>	Interbank Mobile Payment Service, a service offering electronic fund transfers in India through mobile phones
<b>MICR</b>	Magnetic Image Cheque Recognition, a technique which truncates paper cheques into electronic items for processing.
<b>NEFT</b>	National Electronic Funds Transfer, a payment clearing system for low-value electronic credit transfers.
<b>NPCI</b>	National Payments Corporation of India, an independent body operating electronic retail payment systems in India.
<b>RBI</b>	Reserve Bank of India, India's central bank.
<b>RTGS</b>	India's Real Time Gross Settlement system for high-value and urgent electronic credit transfers.

For more information, please contact your  
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