

GUIDE TO DOING BUSINESS IN INDIA

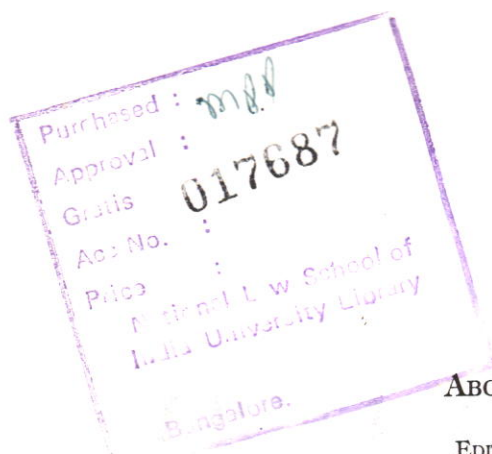
(For Entrepreneurs & Foreigners)

(Industrial Policy, Procedures and Tax Planning
Based on Finance Act, 2001 and Foreign Investment Policy
Announced on 09-05-2001)

COMPILED BY
H.P. AGRAWAL & Co. (P) LTD.

**2001-2002
EDITION**

WADHWA AND COMPANY, NAGPUR



ALL
ABOUT THE BOOK

EDITION 2001-2002

PRICE IN INDIA RS. 295.00
PRICE ABROAD £ 10 \$ 20 (US)

© 2001-2002 ALL RIGHTS INCLUDING COPYRIGHTS RESERVED WITH SMT. RAMPYARI WADHWA. NO PART OF THIS PUBLICATION MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC, MECHANICAL, PHOTOCOPYING, RECORDING OR OTHERWISE, OR STORED IN ANY RETRIEVAL SYSTEM OF ANY NATURE WITHOUT THE WRITTEN PERMISSION OF THE COPYRIGHT OWNER. THIS BOOK CAN BE EXPORTED FROM INDIA ONLY BY THE PUBLISHERS. INFRINGEMENT OF THIS CONDITION OF SALE WILL LEAD TO CIVIL AND CRIMINAL PROSECUTION.

PUBLISHERS : SMT. RAMPYARI WADHWA
FOR WADHWA AND COMPANY,
LAW PUBLISHERS,
AGRA/NAGPUR/NEW DELHI

PAPER-EXPORT STUFF

DISCLAIMER : DUE CARE AND DILIGENCE HAS BEEN TAKEN WHILE EDITING AND PRINTING THE BOOK, NEITHER THE AUTHOR NOR THE PUBLISHERS OF THE BOOK HOLD ANY RESPONSIBILITY FOR ANY MISTAKE THAT MAY HAVE INADVERTENTLY CREPT IN. PUBLISHERS SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF THE USE OF THE BOOK. IN CASE OF BINDING MISTAKE, MISPRINTS, OR FOR MISSING PAGES ETC., PUBLISHER'S ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY, IS REPLACEMENT OF THE BOOK WITHIN ONE MONTH OF PURCHASE BY SIMILAR EDITION/REPRINT OF THE BOOK.

THIS BOOK IS A GENERAL GUIDE TO THE FEATURES OF THE FOREIGN INVESTMENT POLICY OF THE INDIAN GOVERNMENT. THIS BOOK IS BEING MADE AVAILABLE TO CLIENTS AND PROFESSIONAL ASSOCIATES ON THE CONDITION AND UNDERSTANDING THAT IT IS MERELY FOR QUICK REFERENCE AND MUST NOT BE TAKEN AS HAVING AN AUTHORITY OF OR BINDING IN ANY WAY ON THE AUTHORS, COMPILERS, EDITORS AND PUBLISHERS WHO DO NOT OWE ANY RESPONSIBILITY FOR ANY DAMAGE OR LOSS TO ANY PERSON, FOR THE RESULT OF ANY ACTION TAKEN ON THE BASIS OF THE WORK. THE MATERIAL CONTAINED IN THIS BOOK IS NOT INTENDED TO REPLACE APPROPRIATE PROFESSIONAL ADVICE REQUIRED BEFORE ACTING ON ANY MATTER.

PRINTED AT
WIN OFFSET PRINTERS
B-193, OKHLA INDUSTRIAL AREA, PHASE I
NEW DELHI 110 020

PRINTED AND BOUND IN INDIA.

GUIDE TO DOING BUSINESS IN INDIA

CONTENTS

CHAPTER

PAGE

CHAPTER 1

INDIA: A GREAT COUNTRY OF OPPORTUNITIES

1. INTRODUCTION	1
2. POLITICAL BOUNDARIES	1
3. THE LOCATION AND THE SIZE	1
4. THE POLITICAL CONSTITUTION OF INDIA	1
5. THE CLIMATE AND THE SEASONS	2
6. THE LANGUAGES	2
7. THE RELIGIONS	3
8. LEGAL SYSTEM	3
9. POPULATION : HUMAN RESOURCES	3
10. WATER RESOURCES	3
11. MINERAL RESOURCE	4
12. POWER	4
13. THE AGRICULTURE	4
14. THE TRANSPORT FACILITIES	4
15. COMMUNICATION & TELECOMMUNICATION	5
16. CURRENCY	5
17. ECONOMIC PROFILE	6
18. SOME USEFUL HINTS FOR FIRST VISIT TO INDIA	7
18.1 Indian visa	7
18.2 Custom Formalities on Arrival in India	7
18.3 Conversion of Currency	7
18.4 Transportation	7
18.5 Hotel Accommodation	7
18.6 Food and Water	7
18.7 Dress	8
18.8 Travelling within India	8

CHAPTER	PAGE
18.9 Shopping	8
18.10 Sight Seeing	8
18.11 Beggars etc.	8
18.12 General Attitude of Indians	8
18.13 General	8

CHAPTER 2

INDUSTRIAL POLICY OF THE GOVERNMENT OF INDIA

1. FOREIGN INVESTMENT	9
2. INDUSTRIAL LICENSING	12
3. PROCEDURE FOR APPROVAL	12
3.1 Automatic Approval	12
3.2 Approval through Government	12
4. INVESTMENT INCENTIVES	12
5. SOURCES OF FINANCE FOR FOREIGN INVESTOR	13
6. TRADING ACTIVITIES	13
7. IMPORT OF TECHNOLOGY	14

CHAPTER 3

SECTOR WISE INVESTMENT OPPORTUNITIES

1. INFRASTRUCTURE SECTORS	15
1.1 Telecommunication	15
1.2 Power	17
1.3 Roads	18
1.4 Ports	20
1.5 Railways	21
1.6 Civil Aviation	22
2. OTHER SECTORS	23
2.1 Electronics and Information Technology	23
2.2 Electronics Hardware Technology Park Scheme (EHTP) and Software Technology Park Scheme (STP)	25
2.3 Non Banking Financial Services	26
2.4 100% Export Oriented Units (EOU) & Units in Export Processing Zone (EPZ)	27
2.5 Special Economic Zones (SEZs)	28
2.6 Mining	28
2.7 Hotels and Tourism related industry	29

CHAPTER	PAGE
2.8 Banking Sector	29
2.9 Petroleum Sector	29
2.10 Automotive Sector	30
2.11 Food Processing	30
2.12 Drugs and Pharmaceuticals	31
2.13 Insurance	31

CHAPTER 4 FOREIGN COLLABORATIONS

1. TECHNICAL COLLABORATION AGREEMENTS	32
2. FINANCIAL AND TECHNICAL COLLABORATION AGREEMENTS	32
3. APPROVAL OF COLLABORATION AGREEMENTS	32
3.1 Automatic Approval	32
3.2 Government Approval	33
4. FORMATS FOR APPLICATIONS THROUGH AUTOMATIC ROUTE	33
4.1 Agreement for foreign technology transfer	33
4.2 Agreements for foreign investment and technology transfer	34
5. FORMATS OF APPLICATIONS FOR GOVERNMENT APPROVALS	34

CHAPTER 5 REPATRIATION OF CAPITAL INVESTMENT AND RETURN ON INVESTMENT

1. REPATRIATION OF CAPITAL INVESTMENT	36
2. REPATRIATION OF RETURN ON INVESTMENT	36
2.1 Remittance of dividend	36
2.2 Remittance of Interest	36
3. DIVIDEND BALANCING	37

CHAPTER 6 EXPATRIATE EMPLOYEES

1. HIRING OF FOREIGN TECHNICIANS	38
2. REMITTANCE FACILITIES FOR FOREIGN NATIONALS	39
2.1 Not permanently resident in India	39
3. SITTING FEE, COMMISSION, ETC. TO NON-RESIDENT DIRECTORS	40

CHAPTER 7

LEGAL ENTITY FOR INDIAN OPERATIONS

CHAPTER	PAGE
1. FOREIGN COMPANY	42
1.1 Compliance of Companies Act	42
1.1.1 Submission of Accounts	43
1.1.2 Special Provisions relating to Accounts for Liaison Office	44
1.2 Compliance of Reserve Bank of India's Formalities	44
2. INDIAN COMPANY	46
2.1 Incorporation of a public limited company	46
2.2 Management of company	48
2.3 Formalities under Companies Act	49
2.4 Accounts and Audit	49
2.5 Joint Venture Company	49
2.6 Wholly Owned Subsidiary	50
3. OTHER LEGAL ENTITIES	50
3.1 Partnership	50
3.2 Co-operatives	50
3.3 Trusts	50

CHAPTER 8

FINANCIAL ACCOUNTING AND AUDIT

1. ACCOUNTS	51
1.1 Books of Accounts	51
1.2 Accounting Standards	51
1.3 Annual Accounts and Balance Sheet	52
2. AUDIT	52
2.1 Appointment of Auditor	53
2.2 The Audit Report	53
2.3 Cost Audit	54
2.4 Tax Audit	54
2.5 Internal Audit	54

CHAPTER 9

INCOME TAX: THE DIRECT TAX

1. SCOPE OF TOTAL INCOME	55
--------------------------	----

CHAPTER	PAGE
1.1 Income Received in India	55
1.2 Income Accruing or Arising in India	55
1.3 Income Deemed to Accrue or Arise in India	56
2. RESIDENTIAL STATUS	56
2.1 Residential Status of Individuals	56
2.2 Residential Status of Companies	57
2.3 Residential Status of Other Entities	57
3. CATEGORIES OF INCOME CHARGEABLE TO TAX	57
3.1 In case of Resident	57
3.2 In case of Non-resident	57
3.3 In case of not ordinarily resident	57
4. HEADS OF INCOME	58
5. DETERMINATION OF TAXABLE INCOME	58
5.1 Deductions from Income	58
5.2 Incentive provisions	59
5.3 Set off of Losses	59
5.4 Income exempt from tax	60
6. SOME SPECIAL PROVISIONS RELATING TO DETERMINATION OF INCOME	60
6.1 Minimum Alternative Tax	60
6.2 Tax on Distributed profits	61
7. RATES OF INCOME TAX	61

CHAPTER 10

TAX PAYABLE BY FOREIGN ENTERPRISES

1. FOREIGN COMPANY	62
1.1 As a foreign company without carrying out any business activities within India	62
1.2 Through a project office in India	63
1.3 Through a branch office in India	63
1.4 Through a liaison office in India	63
2. INDIAN COMPANY	63
3. DETERMINATION OF TAXABLE INCOME	63
3.1 Supply of Plant & Machinery and Other Equipment	63
3.2 Providing Technical know-How	64
3.3 Dividend income	64
3.4 Interest income	65

CHAPTER	PAGE
3.5 Income from bonds or shares purchased in foreign currency	65
3.6 Profits and gains of shipping business	65
3.7 Business of exploration etc. of mineral oil	65
3.8 Business of operation of aircraft	65
3.9 Profits from business of civil construction etc., in turnkey power projects	65
3.10 Tax paid on royalty or fees for technical services	66
4. NEW LAW ON TRANSFER PRICING	66
5. DEDUCTION ON TAX AT SOURCE: WITHHOLDING TAX	66
6. RATES OF INCOME-TAX APPLICATION TO FOREIGN COMPANIES	68

CHAPTER 11

INCOME TAX PAYABLE BY EXPATRIATE EMPLOYEES

1. RESIDENTIAL STATUS	70
2. DETERMINATION OF TAXABLE CATEGORY OF INCOME	70
2.1 Resident in India	70
2.2 Not Ordinarily Resident	70
2.3 Non-Resident	71
3. INCOME BY WAY OF SALARY	71
3.1 Payments made outside India	72
3.2 Valuation of Perquisites for Tax purposes	72
4. SPECIAL PROVISIONS RELATING TO FOREIGN NATIONALS AND NON-RESIDENTS	73
4.1 Where stay in India does not exceed 90 days	73
4.2 Employee on a ship	73
4.3 Tax paid by the employer	73
4.4 Passage Money	74
5. ALLOWANCES & BENEFITS	74
5.1 Overseas Allowance/Living Allowance	74
6. EFFECT OF TREATIES FOR AVOIDANCE OF DOUBLE TAXATION	75
7. INCOME-TAX RATES	76

CHAPTER 12
ADVANCE RULING

77

CHAPTER 13
TAX TREATIES FOR AVOIDANCE OF DOUBLE TAXATION

CHAPTER	PAGE
1. SIGNIFICANCE OF THE AADTs	79
2. INCOME HEADS UNDER AADTs	80
2.1 Income from immovable property	80
2.2 Business profits	80
2.3 Shipping and Air Transport	81
2.4 Capital Gains	82
2.5 Interest	82
2.6 Dividends	83
2.7 Royalties	84
2.8 Fees for Technical Services	84
2.9 Independent Personal Services	85
2.10 Dependent Personal Services	85
3. AUTOMATIC REDUCTION IN TAX RATES	85
4. CONCLUSION	86

CHAPTER 14
INCOME TAX ASSESSMENT PROCEDURE

1. RETURN OF INCOME	87
1.1 Filing of return of income	87
1.2 The consequences of delay or default in filing of return	88
2. PAYMENT OF INCOME-TAX	88
2.1 Advance Tax	88
2.2 Deduction of tax at source	88
2.3 Self Assessment	88
2.4 Payment of tax on completion of assessment	88
2.5 Consequences of delay in payment of tax	89
3. PROCEDURE FOR DETERMINATION OF TAX LIABILITY	89
3.1 Processing of returns under section 143 (1)	89
3.2 Regular assessment after scrutiny	89
3.3 Best Judgement Assessment	89
4. PENALTIES	90

CHAPTER	PAGE
5. PROSECUTION	90
6. APPEALS	90
6.1 Appeal before Commissioner of Income-tax (Appeals) ("CIT (A)")	90
6.2 Appeal before Income-tax Appellate Tribunal (ITAT)	90
6.3 Appeal before High Court	91
6.4 Appeal to Supreme Court	91
6.5 Revision by the Commissioner	91
7. OBLIGATIONS UNDER INCOME-TAX LAW	91

CHAPTER 15

INDIRECT AND OTHER TAXES

1. RESEARCH AND DEVELOPMENT CESS ["R & D CESS"]	92
1.1 Who is liable to pay the Cess	92
1.2 Amount on which Cess is payable	92
1.3 Rate of Cess	92
1.4 Time and manner of payment	92
2. SERVICE TAX	93
2.1 Rate of Service Tax	94
2.2 Collection of Service Tax	94
2.3 Special Provisions for Non-resident Taxpayers	94
2.4 Special Provisions where payment is received in Foreign Exchange	94
3. CUSTOM DUTY	95
3.1 Exemptions & concessions	95
4. EXCISE DUTY	95
4.1 Exemptions and concessions	95
5. SALES TAX	96
5.1 State Sales Tax	96
5.2 Central Sales Tax	96
5.3 Exemptions and concessions	96
5.4 Legal Formalities	96
6. WEALTH TAX	96
6.1 Residential House	97
6.2 Commercial Building/Property	97
6.3 Motor Cars	97
6.4 Jewellery, Bullion, Utensils of Gold, Silver etc.	97

CHAPTER	PAGE
6.5 Yachts, Boats and Air Crafts	97
6.6 Urban Land	97
6.7 Cash in Hand	97
6.8 Other Assets	97
6.9 Computation of Taxable Wealth	97
6.10 Rate of Wealth Tax	98
7. GIFT TAX	98
8. OTHER TAXES	98
8.1 Stamp duty	98
8.2 Municipal Taxes	98
8.3 Expenditure Tax	98

CHAPTER 16

LABOUR AND EMPLOYMENT

1. LABOUR LEGISLATION	99
1.1 The Factories Act, 1948	99
1.2 Industrial Disputes Act, 1947	99
1.3 Trade Unions Act	100
2. EMPLOYEES' COMPENSATION	100
2.1 Minimum Wages Act	100
2.2 Payment of Bonus Act	100
3. SOCIAL SECURITY	100
3.1 Workmen's Compensation Act, 1923	100
3.2 The Maternity Benefit Act, 1961	100
3.3 The Payment of Gratuity Act, 1972	100
3.4 Employees' State Insurance Scheme	100
3.5 Employees' Provident Fund	101
3.6 Employees Deposit—Linked Insurance Scheme	101
3.7 Pension Scheme	101
4. ANTI-EXPLOITATION MEASURES	101
4.1 Child Labour	101
4.2 Contract Labour	101
4.3 Bonded Labour	101
4.4 Women Labour	101

CHAPTER 17

INTELLECTUAL PROPERTY RIGHTS

CHAPTER	PAGE
1. THE PATENTS ACT, 1970	102
2. INDUSTRIAL DESIGNS	102
3. TRADE MARKS	102
4. COPYRIGHTS	103
5. INFORMATION TECHNOLOGY ACT, 2000	103

CHAPTER 18

BANKS AND FINANCIAL INSTITUTIONS

1. BANKING SYSTEM	104
1.1 Foreign Banks	104
2. FINANCIAL INSTITUTIONS	105
2.1 Indian Institutions	105
2.2 Foreign Institutions	105

ANNEXURES

ANNEXURE	PAGE
ANNEXURE 1	LIFE INDICES OF KNOWN MINERAL RESERVES AT THE PROJECTED RATES OF DEPLETION
	107
ANNEXURE 2	KEY INDICATORS OF ECONOMIC PERFORMANCE
	108
ANNEXURE 3A	LIST OF ITEMS FOR WHICH AUTOMATIC ROUTE OF APPROVAL IS NOT AVAILABLE
	111
ANNEXURE 3B	LIST OF ITEMS/ACTIVITIES WHERE AUTOMATIC ROUTE OF APPROVAL IS AVAILABLE UPTO THE CAP INDICATED
	112
ANNEXURE 4A	GUIDELINES FOR THE CONSIDERATION OF FOREIGN DIRECT INVESTMENT (FDI) PROPOSALS BY THE FOREIGN INVESTMENT PROMOTION BOARD (FIPB)
	116
ANNEXURE 4B	SECTOR SPECIFIC GUIDELINES FOR FOREIGN DIRECT INVESTMENT
	121
ANNEXURE 5	LIST OF INDUSTRIES RESERVED FOR THE PUBLIC SECTOR
	131

ANNEXURE		PAGE
ANNEXURE 6	LIST OF INDUSTRIES FOR WHICH INDUSTRIAL LICENSING IS COMPULSORY	132
ANNEXURE 7	NOTE FOR GUIDANCE OF ENTREPRENEURS FOR SUBMITTING IEMS	133
ANNEXURE 8	NOTE FOR GUIDANCE OF ENTREPRENEURS FOR FOREIGN TECHNOLOGY TRANSFER UNDER AUTOMATIC ROUTE OF RBI	136
ANNEXURE 9	NOTE FOR GUIDANCE OF ENTREPRENEURS FOR FOREIGN INVESTMENT & TECHNOLOGY TRANSFER UNDER AUTOMATIC ROUTE OF RBI	140
ANNEXURE 10	NOTE FOR GUIDANCE OF ENTREPRENEURS SUBMITTING APPLICATION FOR GRANT OF INDUSTRIAL LICENCE/APPROVAL FOR FOREIGN INVESTMENT & TECHNOLOGY AGREEMENTS	146
ANNEXURE 11	LIST OF 22 SPECIFIED INDUSTRIES IN THE CONSUMER GOODS SECTOR IN WHICH DIVIDEND BALANCING IS APPLICABLE	150
ANNEXURE 12	THE MATTERS TO BE INCLUDED IN THE AUDITOR'S REPORT AS PER THE MANUFACTURING AND OTHER COMPANIES (AUDITOR'S REPORT) ORDER, 1988	152
ANNEXURE 13	DEDUCTIONS AVAILABLE FROM BUSINESS PROFITS	156
ANNEXURE 14	LIST OF COUNTRIES WITH WHICH INDIA HAS AGREEMENTS FOR AVOIDANCE OF DOUBLE TAXATION (AADT)	162
ANNEXURE 15	LIST OF COUNTRIES WITH WHICH INDIA HAS AADT PROVIDING FOR TAX RATES ON INTEREST LOWER THAN 20%	165
ANNEXURE 16	PROVIDING FOR THE PREFERRED CLAUSE I.E., THE CLAUSE RESULTING IN AUTOMATIC REDUCTION OF TAX RATES SPECIFIED IN THE TREATY	168
ANNEXURE 17	LIST OF COUNTRIES WITH WHICH INDIA HAS AADT PROVIDING FOR TAX CREDIT IN RESPECT OF TAXES PAID BY AN INDIAN COMPANY ON ITS INCOME WHERE THE FOREIGN COMPANY HAS A SPECIFIED MINIMUM SHARE HOLDINGS	169
ANNEXURE 18	LIST OF COUNTRIES WITH WHICH INDIA HAS AADT PROVIDING FOR TAX RATES ON ROYALTY LOWER THAN 20%	170

ANNEXURE		PAGE
ANNEXURE 19	LIST OF COUNTRIES WITH WHICH INDIA HAS AADT PROVIDING FOR TAX RATES ON FEES FOR TECHNICAL SERVICES LOWER THAN 20%	173
ANNEXURE 20	LIST OF COUNTRIES WITH WHICH INDIA HAS AADT HAVING NO SEPARATE PROVISION REGARDING FEES FOR TECHNICAL SERVICES	175
ANNEXURE 21	SOME IMPORTANT DATES WITH DIRECT TAXES	176
ANNEXURE 22	CUSTOMS DUTY	180
ANNEXURE 23	EXCISE DUTY	185
ANNEXURE 24	INCOMES EXEMPT FROM TAX IN CASE OF INDIVIDUALS	188
ANNEXURE 25	INCOMES EXEMPT FROM TAX IN CASE OF COMPANIES	198
ANNEXURE 26	INCOMES EXEMPT FROM TAX IN SOME OTHER CASES	204