

# Tax and Regulatory Updates

November 2023



## India's soaring growth: A rising powerhouse on the global stage

Over the past decade, the Indian economy has experienced an extraordinary surge, propelling itself to the fifth largest economy with its GDP touching the US\$ 3.75 bn mark in 2023. This resolute economy has garnered global recognition as a 'bright spot in the global economy': The International Monetary Fund has complimented India's 'economic resilience', and the World Bank has stated that India will remain the 'fastest-growing major economy'.<sup>1</sup>

A survey by the Japan Bank for International Cooperation on Japanese manufacturing companies' overseas business operations showed that **India has returned as the top promising country after three years. Manufacturers worldwide view geopolitical risk as increasingly critical for their business strategy** and are enhancing their information gathering and capacity for analysis. For these reasons, India has become a bright spot: It is the only democratic emerging large economy globally, and it shows encouraging economic indicators offering both scale and growth.

India presents a plethora of bright prospects for development due to its robust market size, dynamic workforce and conducive environment for innovation coupled with advancements in automation and digitisation.

Moreover, India's manufacturing sector is experiencing a substantial boost, fortified by favourable policies, improved infrastructure and transformative initiatives such as Make in India. Cultivating the investment climate by instituting pro-growth measures and focusing on the ease of doing business remain the prime foci for the Indian government. This is evidenced by India ranking 63rd in the ease-of-doing-business index in 2019, compared with 142nd in 2014.<sup>2</sup>

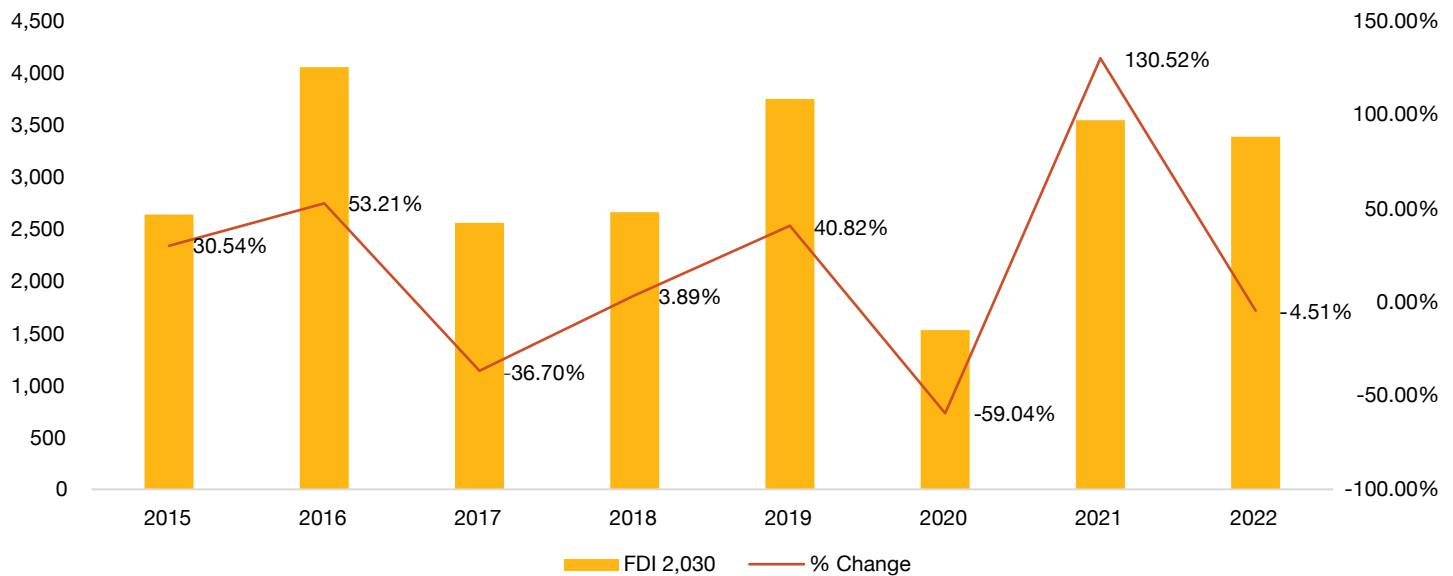
Japan has played a pivotal role in India's economic development. The two countries have forged a strong partnership that has yielded significant benefits through extensive investments, technological and strategic alliances clubbed with support for infrastructure projects, manufacturing capabilities and skill development.



## Forging strong ties: The India-Japan economic partnership

India's total trade with Japan has now increased to US\$ 21.96 bn<sup>3</sup> in 2022–23, with exports valued at US\$ 6.17 bn<sup>3</sup> and imports at US\$ 14.39 bn<sup>3</sup>. Japan is the fifth largest investor in the Indian economy, with cumulative FDI inflows of US\$ 38.7 bn<sup>3</sup> from April 2000 to March 2023, which grew at the rate of 15% per annum until FY 2019–20. While this growth rate dipped during the Covid years, it saw an upswing subsequently, with a 20% increase between FYs 2022 and 2023. Japan is now keen to invest around JPY 5 trillion in India across industries, especially steel, given the industry's prospects of growing to a 300-million-tonne<sup>3</sup> capacity by 2030.<sup>4</sup>

### Direct investment from Japan (million US\$)<sup>5</sup>



Currently, over 1,400 Japanese companies operate in India in various industries, including infrastructure, auto, medical devices, consumer goods, textiles, chemicals and electronics. They also operate in emerging sectors such as renewable energy, electric vehicles, start-ups and tech companies. The automatic 100% FDI route has been allowed in all major sectors (except railways, atomic energy and defence, among others).

Incidentally, India has topped the list of Asia-Pacific region countries as the country where the maximum number of existing Japanese companies plan to expand their running operations. According to a recent survey conducted by Japan External Trade Organization, 72.5% of the Japanese companies that responded plan to expand their operations and invest more in India in the next one to two years.

The Indian government's impetus towards the Make in India campaign to encourage domestic production, attract foreign investment, and foster innovation, coupled with effective implementation of various production-linked incentive<sup>6</sup> schemes, has created substantial scope for mutually beneficial trade relationships between the countries.

Several policy reforms—such as liberalisation of FDI norms, streamlining of regulatory procedures and promotion of ease of doing business—have been implemented to facilitate success of the Make in India campaign.

India has been the largest recipient of Japan's Official Development Assistance Loans<sup>7</sup> for the past few decades. The Delhi Metro is one of the most successful examples of Japanese cooperation through the utilisation of Official Development Assistance.

Japan and India have committed to build high-speed railway in India by introducing Japan's Shinkansen system, which is the flagship project of Japan-India relations. During Japanese Prime Minister Kishida's visit to India in March 2023, the two countries' representatives exchanged notes concerning the provision of a Yen Loan to construct the Mumbai-Ahmedabad High Speed Rail (IV).

Japan has become India's second quad partner to sign an agreement for joint development of the semiconductor ecosystem and maintain the resilience of its global supply chain.

Through the realisation of a mass passenger transportation system, this project is expected to contribute to a more efficient transportation network and promote economic development in the broad target areas.

Japan continues to cooperate in supporting strategic connectivity, which links South Asia to Southeast Asia through the synergy between the 'Act East' policy and 'Partnership for Quality Infrastructure'.

For Japanese companies, the path forward involves initiating their India expansion plans by setting up facilities to meet their Indian market requirements and, thereafter, building them significantly to supply to their markets across Asia, the Middle East, Africa and Europe.

In addition to the strong trade relations, India and Japan also enjoy a long history rooted in spiritual affinity and strong culture. Ties between the two civilisations date back to 752 AD, when the Indian monk Bodhisena visited Japan.

## Indian tax environment

India offers a favourable tax regime characterised by simplified compliance procedures and various incentives to promote investment and economic growth. The corporate tax rate has been reduced progressively with a range of tax incentives, especially for newly set up manufacturing units, such as the low tax rates of 15%. This has made India an attractive destination for businesses seeking to establish their operations. Moreover, India is focusing on enhancing transparency and adopting technology in the taxation field through the shift from physical to faceless audits. It is also adopting digitisation and risk-based parameters for audits and technology-based integration and data sharing. Overall, India's favourable tax regime encourages both domestic and foreign investment, fostering economic development and entrepreneurship. The ensuing sections provide updates on the key taxation measures in India in the quarter beginning on 1 April 2023 and ending on 30 September 2023.

### Efficacy of alternate dispute resolution mechanisms

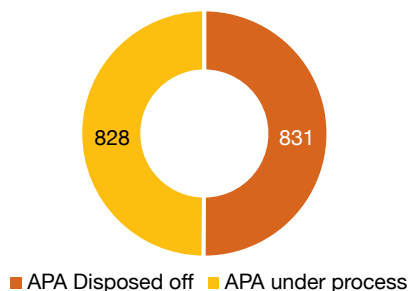
With the intent to promote a taxpayer-friendly environment and ensure efficient administration of tax laws, the Indian authorities encourage the use of alternate avenues, such as APA<sup>8</sup> and MAP<sup>9</sup>, to resolve disputes more efficiently.

Such mechanisms endeavour to provide certainty to taxpayers in the TP domain. Thus, they reduce the risks of double taxation and violation of tax treaty provisions. The APA programme is an important tool to decongest the tax tribunals and higher judiciary of transfer pricing litigations.

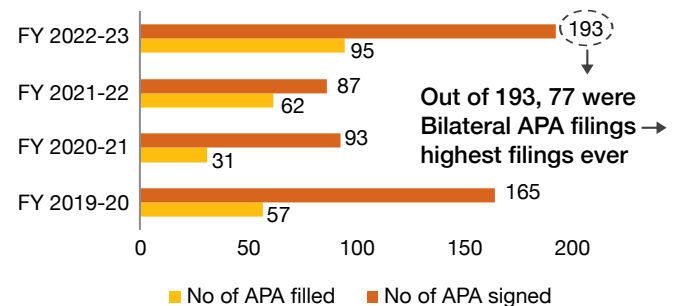
Notably, financial year 2022–23 was a record-breaking year for the APA programme as it saw the following milestones<sup>10</sup>:

- highest ever APA signings (95) in any financial year since the start of the APA programme
- highest number of Bilateral APAs (32) signed in any year
- largest number of single day signings (21) in the history of the programme on 24 March 2023.
- the signing of the 400th Unilateral APA and 500th APA

### Status of APA application as at 31st March 2023



### APA Statistics (filed v/s signed)



Further, the Fourth APA Report<sup>10</sup> acknowledges that intra-group service transactions are widely litigated, and their wide coverage by APAs is an indication that this issue can be amicably resolved by collaboration between the tax department and industry. To further accelerate the conclusion of APA applications, the Indian authorities have taken steps to expand the APA team structure and presence.

Under the MAP<sup>9</sup> regime, India has followed the trend of closing a greater number of cases than are added; accordingly, the total number of MAPs in India's inventory is gradually reducing.

This progress stands testament to India's mission of promoting the ease of doing business and fostering a non-adversarial tax regime.

In this regard, our news alert on the recently released Fourth and Fifth Annual Reports on the Indian APA Programme (APA Report) may be referred to at this [link](#).

## TCS on remittances under the LRS and on overseas tour packages

Under the LRS, resident individuals are permitted to remit US\$ 250,000 (approx. INR 20.5 mn) per FY for permitted current or capital account transactions. With effect from 1 October 2020, such remittances were subject to tax collected at source (TCS) at the rate of 5%<sup>11</sup> on amounts exceeding INR 700,000. Moreover, remittances by resident individuals for overseas tour packages were also subject to TCS at the rate of 5%, without any threshold.

Subsequently, the Indian Government increased TCS rates from 5% to 20%<sup>12</sup> with effect from 1 July 2023 and removed the threshold limits for applicability of TCS. The Government of India recently announced that the increased rate of TCS of 20% will come into effect from 1 October 2023. The new TCS rates are summarised below:

Nature of payment	New rate w.e.f. 1 October 2023
LRS for education, financed by loan from a financial institution	Nil up to INR700,000 0.5% above INR700,000
LRS for medical treatment or education (other than financed by loan)	Nil up to INR700,000 5% above INR700,000
LRS for other purposes	Nil up to INR700,000 20% above INR700,000
Purchase of overseas tour programme package	5% up to INR700,000 20% thereafter

A relevant question arising in this regard is whether the remittance of salary outside India by Japanese expatriate employees deputed to India for a specified duration will be considered as LRS or fall outside LRS under the Foreign Exchange Management (Current Account Transactions) Rules, 2000. It is suggested to check the same with the authorised dealer banker. In a scenario where the subject payments are outside LRS, the same will not attract TCS provisions.



## Secondment of employees to India

In May 2022, the Supreme Court of India evaluated the taxability of reimbursement that an Indian company (I Co) has made to a foreign company (F Co) in respect of salary payments of seconded employees in India. The court, in the context of service tax,<sup>13</sup> held that F Co was involved in the provision of 'manpower supply services' to I Co on account of the secondment arrangement; therefore, reimbursement under such an agreement was subject to service tax.

The Supreme Court's interpretation, while in the context of service tax, raises the question about whether such reimbursements might be subject to tax in India as FTS under the Indian income-tax laws.

Subsequent to the above, there have been numerous rulings by the Tribunals<sup>14</sup> and Courts.<sup>14</sup> Based on the applicable facts of the case, the rulings held that the cost-to-cost reimbursement I Co has made to F Co for salary paid to such seconded employees is not to be taxed as FTS. Accordingly, these rulings are distinguished from the Supreme Court ruling.

**Moreover, said rulings relied on the terms of the secondment agreement. They noted that the seconded personnel are employees of I Co, and the amount I Co has paid to F Co was on account of cost-to-cost reimbursements. The terms referred to in the rulings, inter-alia, include the following:**

- Assignment will mean the release of personnel by F Co.
- The seconded employee will function solely under the control, direction and supervision of I Co.
- The seconded employee will work exclusively for I Co.
- F Co will not have any obligations towards I Co regarding the seconded employee's performance.
- F Co's privity of lien will cease during the period of secondment.

In this regard, our news alert on the recent ruling delivered may be referred to at this [link](#).

From a GST perspective also, there has been increase in investigation/ notices on various aspects around secondment including valuation (whether only overseas salary portion or also Indian salary), credit availability of amount paid on secondment as well as interest applicability on the same. It is important to evaluate the implications on a case to case basis for the same. Further, there are other cases pending before the Supreme Court on similar matter and it is important to keep a track of the same as well.



## 50th GST Council meeting: Critical updates

The 50th meeting of the GST Council was held on 11 July 2023. The GST Council made several important announcements relating to both substantive and procedural aspects.

**The following are the key updates and clarifications issued:**

- Clarification has been provided on the ongoing issue of the cross-charge vs input service distributor (ISD). Moreover, a circular has been issued on the same, and various scenarios have been provided clarifying whether ISD is mandatory or not. The GST Council meeting also specified that amendments would be made prospectively to make the ISD mechanism's requirement mandatory.
- Clarification has been issued on GST taxability and reversal in case of warranty replacements and repair service.
- Regarding formation of the GST Appellate Tribunal, the Centre has notified provisions pertaining to the GST Appellate Tribunal as well as notified 31 benches of the Appellate Tribunal across States.
- For GST on online gaming, GST rate of 28% is applicable on the full-face value of transactions in casinos, racecourses and online gaming. Various other amendments have been proposed for online gaming as well.
- Other announcements have been made to afford ease of compliance to businesses.

Additionally, various circulars and notifications have been issued to give effect to such recommendations of the GST Council.

In this regard, our news alert summarising these clarifications may be referred to at this [link](#).

## India and Japan signed a joint action plan for AEOs

The Indian and Japanese authorities have signed a joint action plan to lay out the roadmap to enter into a mutual recognition arrangement or agreement (MRA) for authorised economic operators (AEOs) of both countries in the near future. This plan was signed on the sidelines of the 141st and 142nd sessions of the World Customs Organization's Customs Co-operation Council meeting in Brussels, Belgium, on 24 June 2023.

By mutual recognition of AEOs, the two Customs administrations agree to recognise the AEO status accorded to a business under the other country's programme; moreover, the countries will provide reciprocal benefits to the AEOs of the other country. The benefits are generally in the nature of, for example, enhanced system-based facilitation and reduced interdiction, and a lower risk score for Indian exporters' consignments at foreign ports.

The Indian CBIC expects that an MRA with Japan will have the potential to significantly boost India-Japan trade.<sup>15</sup>

Once the India-Japan MRA is signed, privileges that accredited merchants and businesses are entitled to under India's AEO scheme will be available to them in Japan as well. AEO-accredited Indian exporter partners in Japan may also avail these benefits.

## Ease of doing business: Acceptance of e-CoOs under the India-Japan comprehensive economic partnership agreement

The Indian Government clarified that e-certificates of origin (e-CoOs) issued by Japan's issuing bodies will be valid in India, provided that they comply with all the requirements (e.g. formatting requirements and rules of origin). To claim preferential treatment, importers must upload the e-CoOs on the e-Sanchit portal.<sup>16</sup>

### Other key aspects

- A few HS codes are substituted in the India-Japan Comprehensive Economic Partnership Agreement Exemption Notification (through notification no. 36/2023-Customs, dated 29 April 2023). The aim is to align the HS codes of said notification with the Finance Act, 2023, with effect from 1 May 2023.
- An anti-dumping investigation has been initiated on the import of sodium cyanide from China, the EU, Japan and South Korea.

## References

- [1] [www.livemint.com](http://www.livemint.com) and [www.economictimes.indiatimes.com](http://www.economictimes.indiatimes.com)
- [2] Economic Survey 2022–23
- [3] <https://www.ibef.org/indian-exports/india-japan-trade>
- [4] <https://www.investindia.gov.in/country/japan-plus>
- [5] Data published by Japan's Ministry of Foreign Affairs (<https://www.mofa.go.jp/region/asia-paci/india/data.html>; US\$ 1 = JPY 138.18)
- [6] Production-linked incentive schemes aim to provide incentives on incremental profit or sales from products manufactured in domestic units
- [7] Official development assistance
- [8] Advance pricing agreement
- [9] Mutual agreement procedure
- [10] Fourth and Fifth Annual Reports on the Indian Advance Pricing Agreement (APA) Programme (APA Report) released by Central Board of Direct Taxes (CBDT)
- [11] This is 0.5% in case of loans obtained for educational purposes from specified financial institutions; this rate remains unchanged till date. Moreover, in case the remitter does not furnish the PAN, the TCS is to be made at 10%.
- [12] Regarding remittances outside India for the purpose of education and medical treatment, there are no changes made with respect to either rates or threshold limits.
- [13] CCE Bangalore vs Northern Operating Systems
- [14] Serco India (Delhi bench of the Tribunal – 27 June 2023);  
Juniper Networks Inc. (Bengaluru bench of the Tribunal – 8 May 2023);  
Google LLC (Bengaluru bench of the Tribunal – 20 February 2023);  
Boeing India (Delhi High Court – 11 October 2022);  
Flipkart (Karnataka High Court – 24 June 2022)
- [15] CBIC tweet dated 24 June 2023
- [16] Refer to instruction no. 13/ 2023-Customs, dated 31 March 2023  
Refer to instruction no. 19/ 2023-Customs, dated 4 July 2023  
Refer notification no. 69/ 2011-Customs, dated 29 July 2011  
Refer to intimation notification case no. AD(OI) – 03/ 2023, dated 31 March 2023



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