

IT & Software Industry

GST Sectoral Series - Part II

July 2022

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Overview of Indian IT/ ITeS Industry

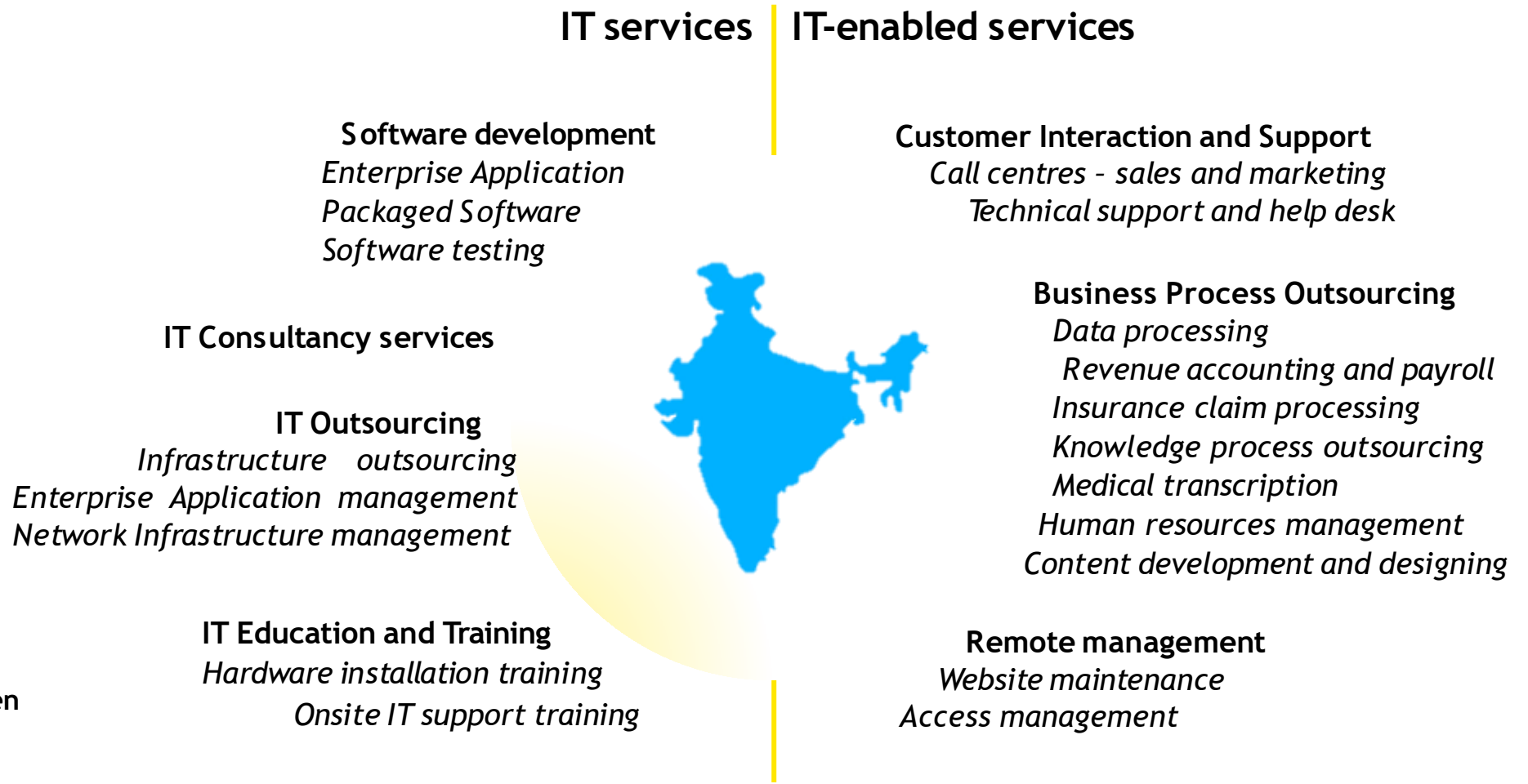
8% Contribution to India's GDP
FY 2020-21

\$194bn Total revenue
FY 2020-21

\$150bn Export revenue
FY 2020-21

4.47mn Employment
FY 2019-20

36% Share of Women Employees
FY 2019-20



Sunrise sector of India

Source: Software and Services Sector | Ministry of Electronics and Information Technology, Government of India (meity.gov.in)

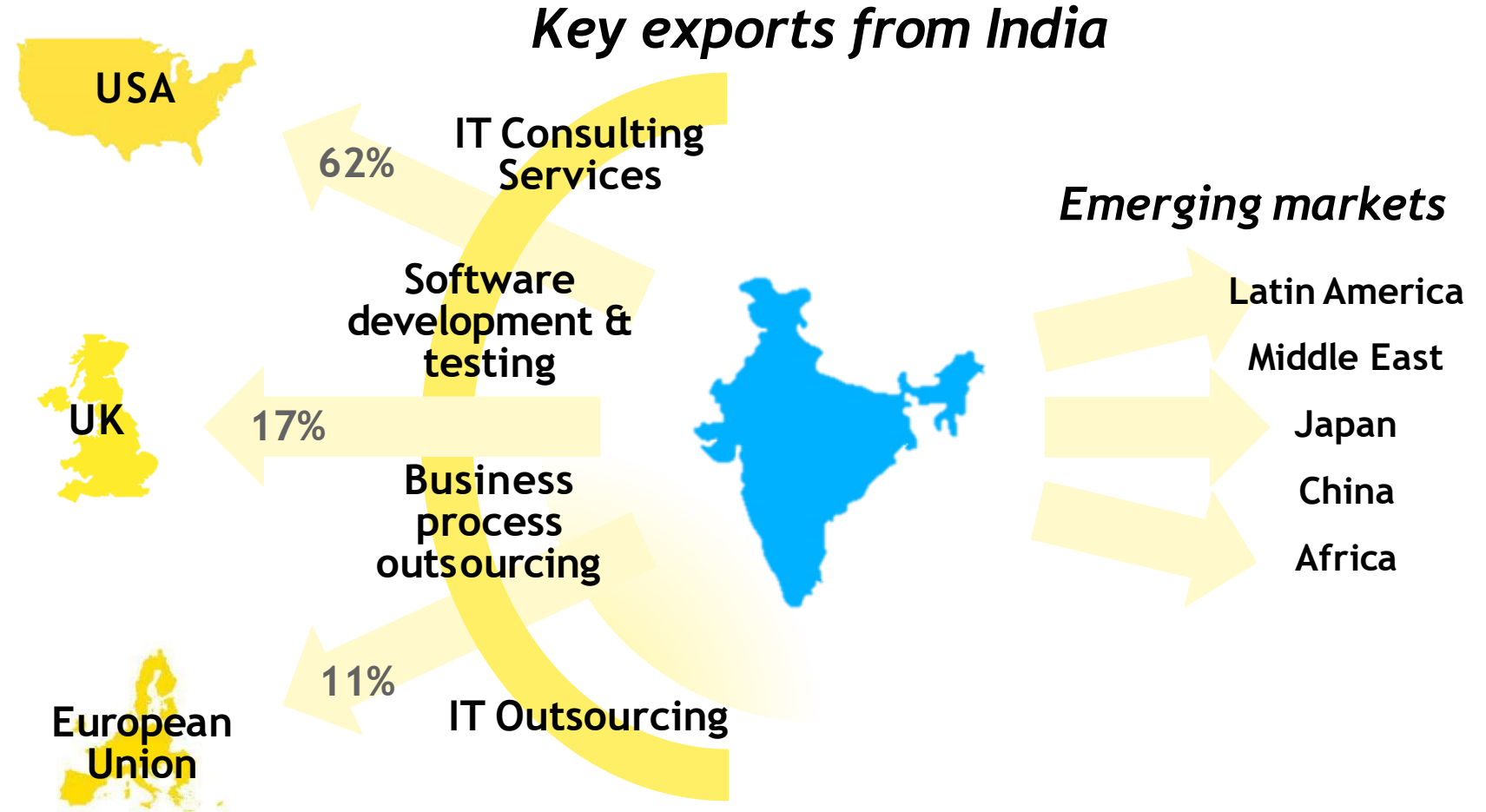
Indian IT/ ITeS Industry - A GLOBAL POWERHOUSE

The India ADVANTAGE

- ▶ Cost-effective skilled manpower
- ▶ State-of-the-art technologies
- ▶ High quality and reliability
- ▶ Speedy deliveries

ADVANTAGE to India

- ▶ Preferred investment destination
- ▶ Huge job opportunities
- ▶ Rising export revenues



Source: Software and Services Sector | Ministry of Electronics and Information Technology, Government of India (meity.gov.in)

Key sub sectors

IT Services

Business Process
Management / GIC /
GCC

Software Products

Engineering R&D

Infrastructure /
Data Centre

GST and Regulatory Touchpoints

Inception/ Conceptualisation	Setting up operations	Commencing operations
<ul style="list-style-type: none">▶ Curating the product idea and selecting the preferred market place▶ Factors relevant for deciding the place of operations:<ul style="list-style-type: none">▶ Availability of requisite skillset▶ State of infrastructure▶ Permissible tax beneficial schemes - SEZ / STP▶ Incentives offered by State Governments▶ Identifying registrations and approvals required for setting up operations	<ul style="list-style-type: none">▶ Obtaining set-up approvals under SEZ / STP scheme if opted for▶ Obtaining GST registration for every state where place of business is located▶ Determining GST implications and designing tax systems accordingly▶ Filing LUT for export of services or provision of services to SEZ units / developers without payment of IGST▶ Obtaining approvals under relevant State Government incentive scheme	<ul style="list-style-type: none">▶ Issuing GST compliant invoices▶ Filing periodical GST returns▶ Filing periodical GST refunds▶ Monitoring recovery of export proceeds in convertible foreign exchange within 1 year▶ Monitoring compliance with export schemes like SEZ / STP▶ Claiming incentives under State Government incentive schemes

Broad GST implications

Domestic supply of services

- ▶ Domestic supply of IT/ITeS services liable to GST @ 18%
- ▶ Type of taxes to be charged based on the location of service recipient (i.e. place of supply)
- ▶ Supply of services to SEZ unit/ developer for authorised operations to be treated as zero-rated

Cross-border supplies

- ▶ Typically, the place of supply of IT/ITeS services should be the location of service recipient (i.e. outside India)
- ▶ However, In case of intermediary services, the place of supply to be the location of service supplier (i.e. within India) - **CGST + SGST to be discharged**
- ▶ In case of non-intermediary services, provided conditions under Section 2(6) of the IGST Act, 2017, are met, services to qualify as 'exports' and treated as zero-rated
- ▶ The exporter of service has been provided with following options:
 - ▶ Supply of services without payment of IGST and claim refund of unutilized ITC on inputs and input services
 - ▶ Supply of services with payment of IGST and claim refunds of such IGST paid

Export of services

- ▶ Service to qualify as 'exports' upon fulfilment of following conditions:
 - ▶ Supplier of services should be located in India
 - ▶ Recipient of services should be located outside India
 - ▶ Place of supply should be outside India
 - ▶ Payment for such services should be received by the supplier in convertible foreign exchange or such other mode permitted by RBI
 - ▶ Supplier and recipient of services should not be merely establishments of a distinct person
- ▶ Exporters seeking to claim zero-rating benefit of providing services without payment of tax required to file LUT at the start of every of financial year.
- ▶ As per Rule 96(10), the export proceeds to be realised within 1 year from the invoice date, failing which supplier is required to discharge IGST along with interest (from invoice date) within 15 days from lapse of 1 year.

Test of 'intermediary'

- ▶ The test of 'intermediary' is a major hurdle that IT/ITeS exporters are required to pass to claim zero-rating status
- ▶ 'Intermediary' has been defined vide Section 2(13) of the IGST Act, 2017 as under:

Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

- ▶ While concept of 'intermediary' for services was introduced in service tax regime, guidance on the same for IT/ITeS industry was provided only under GST regime.

Circular no. 107/26/2019 (rescinded)

- ▶ Supplier of services would not be treated as 'intermediary' if he is involved in the supply of services on his own account
- ▶ Definition of ITeS services provided under Rule 10TA(e) of Income Tax Rules, 1962 was borrowed as reference to different types of ITeS services

Circular no. 159/15/2021

- ▶ Pre-requisites for 'intermediary' services are:
 - ▶ Minimum of 3 parties to be involved
 - ▶ Two distinct supplies - main supply and ancillary supply
 - ▶ Intermediary service provider to have the character of agent, broker or any other similar person
 - ▶ Does not include a person who supplies such goods or services or both on his own account
- ▶ Subcontracting of service is not intermediary

Test of ‘intermediary’

Illustrations of IT/ITeS provided under Circular no. 159/15/2021

Selling agent

- ▶ ‘A’ is a manufacturer and supplier of machine. ‘C’ helps ‘A’ in selling the machine by identifying prospective buyer ‘B’.
- ▶ ‘C’ charged ‘A’ for his services of locating ‘B’ and helping in finalizing the sale between ‘A’ and ‘B’.
- ▶ ‘C’ is providing ‘intermediary services’ to ‘A’.

Procurement agent

- ▶ ‘P’ is an insurance company located outside India which requires insurance claim processing services in India.
- ▶ ‘Q’ has been approached for arranging such services in India.
- ▶ ‘Q’ contacts ‘R’ who provides insurance claim processing services in India.
- ▶ ‘Q’ is providing ‘intermediary’ services to ‘P’.

Subcontract

- ▶ ‘A’ has a contract with ‘B’ for providing customized software.
- ▶ ‘A’ outsources the task of design and development of a particular module of the software to ‘C’ for which ‘C’ may have to interact with ‘B’.
- ▶ ‘C’ does not qualify as an ‘intermediary’ in this case.

Outsourcing

- ▶ ‘A’ is a manufacturer and supplier of computers based in USA.
- ▶ ‘A’ outsources the task of providing customer care services to a BPO firm ‘B’.
- ▶ ‘B’ provides services to ‘A’ by interacting with customers of ‘A’ and addressing their queries/ complains.
- ▶ ‘B’ does not qualify as an ‘intermediary’ in this case.

SEZ & STPI Regulations at a glance

Key features	SEZ	STPI
Governing regulations	Special Economic Zones Act, 2005	Foreign Trade Policy
Locational bounding	SEZ unit has to be set-up within a notified demarcated zone	STPI unit can be set-up at any place of export
Broad benefits available	<ul style="list-style-type: none"> • Upfront exemption of GST/ customs duty on import of goods • Upfront exemption of GST on procurement of goods or services • No GST on import of services • Permissibility to apply under Service Export Incentive Scheme for eligible services (scheme is likely to be discontinued and replaced with a drawback scheme for eligible services) • Refund/ rebate of input GST in case input tax is charged 	<ul style="list-style-type: none"> • Upfront exemption of GST/ customs duty on import of goods • Refund of GST paid on domestic procurement of goods • Refund/ rebate of input GST in case input tax is charged

SEZ & STPI Regulations at a glance

Key features	SEZ	STPI
Territorial jurisdiction	For various regulations, SEZ is considered as a territory outside India	STPI is treated as a territory in India
Movement of assets	Inward and outward movement of assets is regulated - generally physical verification is performed by Customs officer at zone entry points. Even temporary removal of asset for repairs, replacement, WFH, etc. is regulated by Customs officer.	While there is no physical verification involved, movement of assets can be undertaken based on intimations.
Access to unit	Access to unit is regulated by Customs officer by way of issuance of ID cards to authorised employees.	Access to unit is not regulated - assets could be used only for authorised operations.

Work From Home under SEZ

Present Status

- In current business environment, specifically in the Information Technology ('IT')/ Information Technology Enabled Services ('ITES') sector, allowing employees to Work from home ('WFH') has become an essential business requirement for rendering services to the clients on a sustainable basis.
- To enable the above, rules and regulations were introduced in the SEZ legislation (Rule 43)
- However, clarity on the duration of the approval and threshold of number of employees was not available since instructions issued by jurisdictional SEZ authorities for short term basis
- Prescribed OSP guidelines required to be followed for registered OSP entities
- Present Blanket approvals have been granted by Jurisdictional Development SEZ authorities:
 - Noida SEZ - Upto 31 December 2022
 - Cochin SEZ - 31 December 2022 on intimation basis
 - SEEPZ - 50% from 1 July 2022 and 100% from 01 September 2022

Key Attributes

Work From Home

1

Category of employees: Permanent and Contractual

2

Duration of Approval - 1 year

3

Employees: 50% of Total Strength , DC can approve higher for bona fide reasons

4

Application: 90 days from date of commencement of Rules, 15 days for renewal

5

IT Equipment: Removal without duty under approval from Customs till WFH validity

6

Additional Compliances: Attendance record submission, Customs certification

Present vs Amended Rules

Present WFH vis-a-vis Amended Rule

Uniform Rule with Pre-defined procedure
Duration and limits specified
Uniform Compliances (Registers and Certifications)
Permission to remove IT equipment's for a longer duration
Applicable to all Permanent as well as contractual employees

Old Rule



Amended Rule



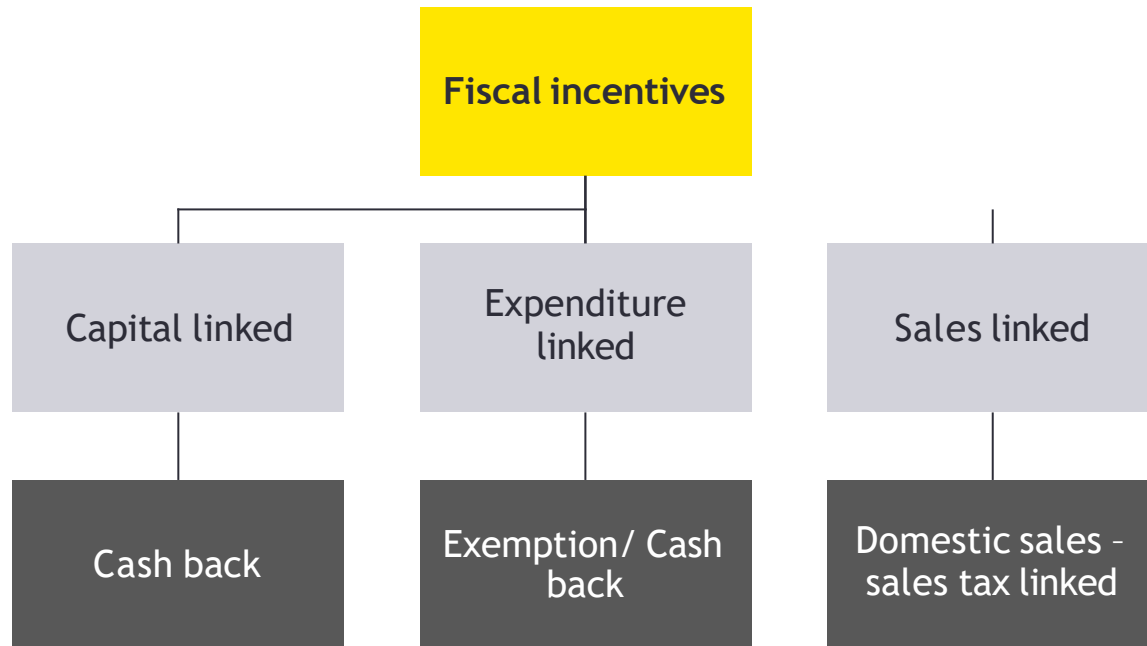
Challenges faced by SEZ units with existing policy:

1. No uniform Permission - Each jurisdiction having separate guidelines.
2. Permission was either not granted for only for short duration
3. Permission by Customs from removal of IT equipment's was temporary not co-inciding with the approval
4. Percentage of employees covered depended to case-to-case basis

State incentives to IT/ITeS

- ▶ Centre & many states have recognized IT/ITeS as a thrust sector and have introduced sector specific policies. Advertisement campaigns also have been taken up by some states
- ▶ State-level incentives for such new or significant expansion projects may include:
 - ▶ Partial/Full exemption from stamp duty
 - ▶ GST reimbursements
 - ▶ Concessions on electricity tariff/duties
 - ▶ Subsidized power tariff
 - ▶ Continuous industry status
- ▶ Benefits defined by the size of eligible investment, location and employment generation
 - ▶ The nature, quantum of incentives may vary depending on whether the investment is classified as a new unit or an expansion unit
 - ▶ State may be divided into groups/zones depending on the development index, quantum of incentives may vary
 - ▶ The definition of eligible fixed capital investment varies in each state, which effects the eligibility of incentives in that state
 - ▶ Investment period is the time period within which the investment made is considered for eligibility of incentives
 - ▶ Operative period is the minimum number of years for which a unit has to be in commercial production
 - ▶ The states provide customized incentive packages to mega projects/ thrust sectors
 - ▶ The states prescribe the minimum percentage of local labour that must be employed by the unit

Nature of fiscal incentives in India



- 1 Capital linked:** A percentage of capital investment is received as a capital subsidy
- 2 Expenditure linked:** Incentive is available as cash refund/exemption of costs like electricity duty, power tariff, stamp duty
- 3 Sales linked:** Specified percentage of sales tax paid (VAT/CST/GST) to the state government is given as a subsidy

Key parameters reviewed by State authorities

Location and investment

1

To evaluate the maximum benefits that can be availed

Sector

2

To identify the incentives by sector specific policies

Sales pattern

3

To identify and quantify incentives available under the foreign trade policy and state industrial policy

Expenditure

4

To quantify the incentives linked to expenditure

Tamil Nadu - IT Policy

- ▶ Eligible IT/ITes entities comprise of a number of industries
 - ▶ IT Services (ITS) and IT enabled Services (ITeS)
 - ▶ Cloud Computing Services
 - ▶ Remote Infrastructure Management (RIM) and Software Industries
 - ▶ IT Maintenance and Servicing Units
 - ▶ Hardware Units
- ▶ Companies providing certain IT Services may also avail incentives under the Policy
 - ▶ Systems Integration
 - ▶ Processing Services
 - ▶ Information Services (IS) Outsourcing
 - ▶ Packaged Software Support and Installation
 - ▶ Companies which offer certain IT/ITeS components (listed in Annexure II) as part of the business are also eligible
- ▶ Eligible Mega Projects receive a structured package of incentives, which is determined on a case-to-case basis

Tamil Nadu - Illustrative Incentives

Fiscal Incentives

Capital Subsidy - SEZ & IT Park

- Additional capital subsidy of 50% over the prescribed limit
- Applicable for new and expanding units within Zone A, which are based in ELCOT promoted Special Economic Zones (SEZs) and IT Parks

Capital Subsidy - Zones B & C

- Additional capital subsidy of 10% for units established in Zone B
- Additional capital subsidy of 25% for units set up in Zone C

Stamp Duty Reimbursement

- One time reimbursement of 50% for land or building based transactions
- Applicable for units established in Zone C

Non-Fiscal Incentives

Treatment Plants

- Incentives for setting up of Sewerage Treatment Plant and Reverse Osmosis Plant will be provided
- Applicable for units established in Zones B and C

Administrative Incentives

- Exemption from certain provisions under the Tamil Nadu Shops and Establishment Acts, 1947 and Tamil Nadu Industrial Establishment (National and Festival Holidays) Act, 1958
- Self-certification for select Rules/Acts

Other Incentives

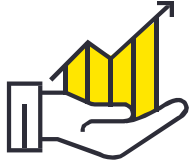
- Relaxation of Floor Space Index (FSI) in IT Parks
- Open Space Reservation (OSR) for SEZ's and non-SEZ's

Telangana - Illustrative Fiscal and Non-Fiscal Incentives

Incentive	Particulars
Stamp Duty	100% reimbursement for first transaction and 50% reimbursement for the second transaction for non-mega units only
Allotment of Government Land	Preferential allotment of land to IT/ITES units based on factors such as employee strength and number of years the company has been in existence
Power Tariff	Electricity will be supplied at Industrial rates
Reimbursement for Energy Saving Initiatives	Implementation of energy efficient products and infrastructure, such as LEDs and smart sensors, will be reimbursed up to 10% of actual costs or INR 10 Lakhs, whichever is lesser
Reimbursement of Patent Costs	Up to INR 5 Lakhs for domestic patents and INR 10 lakhs for international patents
Reimbursement of Quality Certification Costs	20% up to a maximum of INR 4 Lakhs
Subsidy of Lease Rentals [Applicable to SME and Mid-Scale Units only]	25% subsidy up to INR 5,00,000 per annum for 3 years
Recruitment Assistance	INR 10,000-20,000 per employee for a minimum annual recruitment of 100 new IT/ITES professionals from the colleges in Telangana, dependent upon industry size
Installation of Solar Power Infrastructure [Applicable to Mega Projects only]	A grant of 10% capital subsidy or INR 20 Lakhs, whichever is lower, will be provided for the installation of solar power units
Other Incentives	Grant of 'Continuous Industry' status, exemption from statutory power cuts, Telangana Pollution Control Act, and inspections under certain labour laws

- ▶ Additional customized incentives may be provided to Mega Units on a case-by-case basis
- ▶ The given table provides a list of key incentives and is not exhaustive in nature

Overview of Gujarat IT/ITeS Policy



Objective

- ▶ Encourage Mega and Large Scale Investment which act as catalyst for growth in IT/ ITeS sector
- ▶ Generate high skilled IT skilled human resources
- ▶ Establish Gujarat as a hub for innovation in emerging and advanced technologies



Targets

- ▶ Place Gujarat as Top 5 performing states in Indian IT sector
- ▶ Increase Gujarat annual IT exports from INR 3,000 Crore to Rs 25,000 Crore
- ▶ Generate 1 lakh new jobs



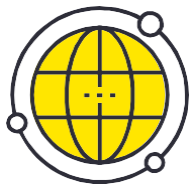
Operative Period

- ▶ Scheme is valid for 5 years from 7 February 2022 to 31 March 2027
- ▶ Eligible entities who have applied for assistance on or before 31 March 2027 and commenced operations on or before 31 March 2028 shall be eligible



Applicability

- ▶ IT/ITeS Units
- ▶ IT City / Townships
- ▶ IT Parks
- ▶ Mega Project: Minimum investment of Rs 250 Cr or minimum direct employment of 2,000 IT positions



Eligible Activities/ Services

- ▶ IT software
- ▶ IT enabled services like BPO, KPO, non-banking services including insurance, website services, etc
- ▶ Emerging Technologies like cyber tech, Big Data, AI, Blockchain, Machine Learning, etc

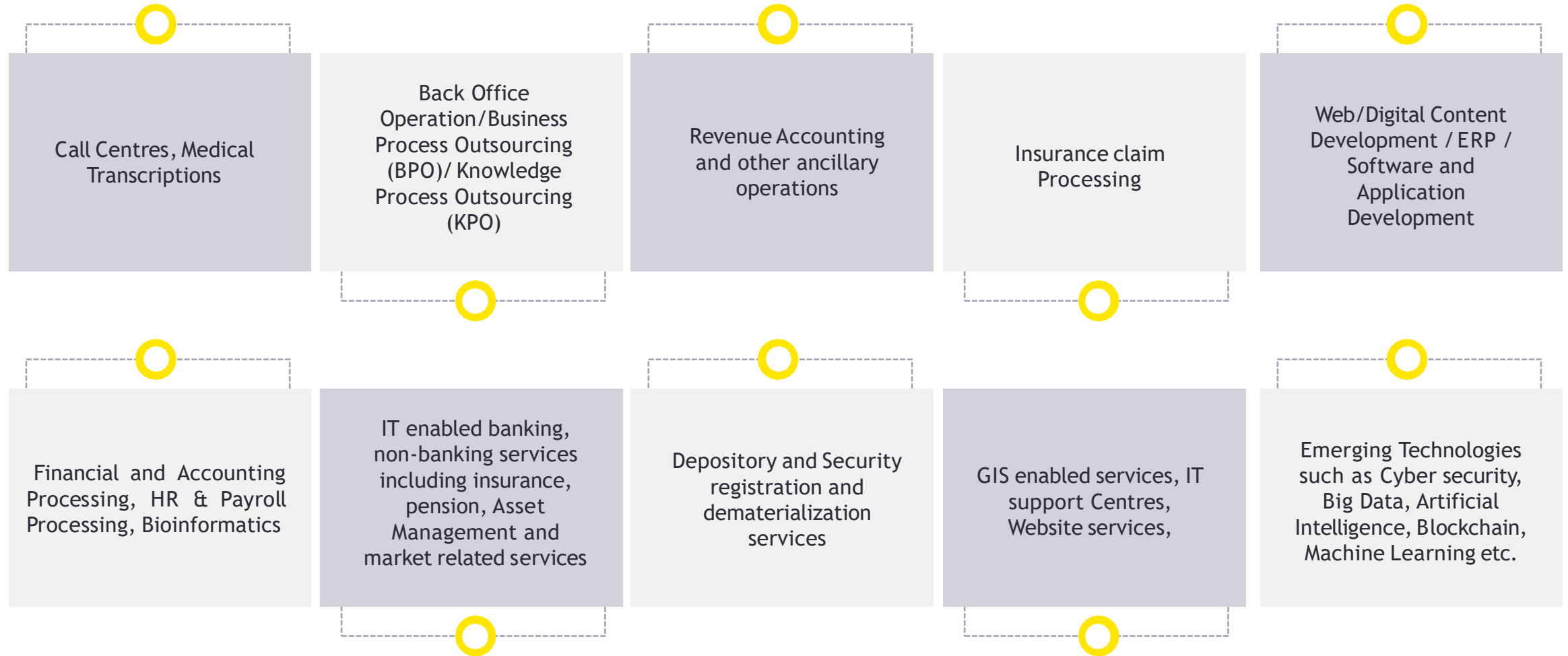


Incentives

- ▶ Capex Support - One time reimbursement upto 25% of eligible Capex with a maximum cap
- ▶ Opex Support - Upto 15% of annual eligible opex with a maximum cap
- ▶ Special incentives like EGI, EPF, etc

Scope of IT/ITeS industry under the Policy

IT Enabled Services (ITeS) implies service rendering through application of IT and will include the following:



Incentive on eligible opex for 5 years

- Opex support for Annual Eligible operational expenditures for a period of 5 years from date of commencement of operations or in-principle approval whichever is later.
- Upto 15% of annual eligible opex with maximum yearly cap of INR 20/40 crores
- The disbursement of Opex Support would be quarterly

Nature of benefits	Description of benefits
○ Lease rental Expenditure	<ul style="list-style-type: none">• Expenditure incurred on lease rental of office space from third party• Maximum upto INR 50/sq.ft. of build-up area per month or actual expenditure whichever is less
○ Bandwidth Expenditure	<ul style="list-style-type: none">• Actual expenditure incurred on subscribing or leasing bandwidth from the licensed ISP with valid GST number
○ Cloud rental Expenditure	<ul style="list-style-type: none">• Actual expenditure incurred on subscribing or leasing bandwidth from the licensed CSP with valid GST number
○ Power Tariff Expenditure	<ul style="list-style-type: none">• Actual expenditure incurred on energy units consumed• Banking charges paid as per provisions laid down under Section 10 of the Gujarat Solar Power Policy, 2021.
○ Patent Expenditure	<ul style="list-style-type: none">• Actual expenditure incurred upto INR 5 Lakh per patent• Claim for maximum upto 10 patents per years are only admissible

Special incentive (in addition to capex and opex support)

- Opex support for Annual Eligible operational expenditures for a period of 5 years from date of commencement of operations or in-principle approval which ever is later.
- The disbursement of Opex Support would be quarterly

Nature of benefits	Description of benefits	Period of benefit*
<ul style="list-style-type: none"> ○ Employment Generation Incentives# 	<ul style="list-style-type: none"> • For every new and unique job created in the State • Applicable for new local employees hired and retained for a minimum period of one year at 50% of one month's CTC upto INR 50,000 for male employees and INR 60,000 per female employees 	One-time
<ul style="list-style-type: none"> ○ Interest Assistance 	<ul style="list-style-type: none"> • Interest subsidy at 7% on term loan or actual interest paid which ever is less with maximum cap of INR 1 Crore per annum • Interest re-payment period to begin during operative period of the policy 	5 years
<ul style="list-style-type: none"> ○ Atmanirbhar Gujarat Rojgar Sahay 	<ul style="list-style-type: none"> • EPF reimbursement upto 100% for female employees and 75% for male employees • Reimbursement for only employees residing and working from Gujarat shall be admissible 	5 years
<ul style="list-style-type: none"> ○ Electricity Duty Incentive 	<ul style="list-style-type: none"> • 100% of Electricity Duty paid to Gujarat Government 	5 years

Note:

Employment Generation Incentives and Atmanirbhar Gujarat Rojgar Sahay are available even in case employees work from home located in Gujarat

*Period of benefit shall be counted from date of commencement of operations or in-principle approval which ever is later

Opportunities for CA fraternity

Inception/ Conceptualisation	Setting up operations	Commencing operations
<ul style="list-style-type: none">▶ Assistance in identifying key benefits under various regulations▶ Advising on structure as so avail maximum available benefit▶ Representation to State authorities for seeking a customised package of incentives	<ul style="list-style-type: none">▶ Assistance in obtaining GST registration▶ Assistance in obtaining SEZ / STPI registration▶ Assistance in obtaining approval under State incentives scheme	<ul style="list-style-type: none">▶ Assistance in undertaking GST compliances▶ Assistance in obtaining GST refunds▶ Assistance in compliances under SEZ / STPI

Questions?



*Thank
you*

