ANNEXURE - VIII

ROLE OF PICUP TO PROVIDE INCENTIVE TO RESIDENT INDIANS AND NON RESIDENT INDIANS
ROLE OF PICUP: TO PROVIDE INCENTIVE TO RESIDENT INDIAN & NON RESIDENT INDIAN

1. Business and Investment Climate in India:

(A) Economic Factors:

The foreign investor who wishes to undertake business in India will find tremendous opportunities since India is set for rapid industrialisation. The New Industrial policies which make a radical departure from the Industrial policy resolutions, 1956. Opens up a new chapter in India's economic history. The reforms announced in the new policy offer a great deal of freedom to business houses and entrepreneurs to make their investment decisions. The far reaching changes include the dismantling of cumbersome regulation and controls, abolition of industrial licencing for all projects except for 18 specific groups, scrapping of the there should assets limit for MRTP companies, relaxation of the foreign exchange regulation Act to encourage greater flow of foreign direct investment and toning down the all pervasive role to the Public sector and allowing private sector entry in a number of areas so for reserved exclusively for the public sector.

(B) Industrial Licensing:

An Industrial undertaking will not require a Licensing to manufacture an article unless:-
The proposed article of manufacture is reserved for the public sector or is an article where licencing is compulsory.

The proposed project is located within 25 kms. of the periphery of a city having a population of more than 1 million. This condition is however not applicable to electronics, computers, software, printing and other Non-polluting industries located within state Govt. designated Industrial areas.

Substantial copansion of existing units is exempt from licencing providing the terms of manufacturing are not covered in the list as per appendix I and II. Substantial expansion is however subject to the locational conditions mentioned above.

Board bonding and manufacture of New articles by existing units without additional investment is exempt from licencing provided the items of manufacture are not covered in the list as per appendix I and II. This facilities is available not with standing any locational condition.

New projects for manufacture or articles covered by Appendix II or their substantial expansion are required to fell an information memorandum in a
prescribed from with the sectorial for industrial for industrial approvals in the ministry of Industry.

(C) Foreign Investment:

- Approval for direct foreign investment upto 51% foreign equity in high priority industries well be given without procedural bottlenecks. Such clearances will be available if foreign equity covers the foreign exchange requirement for imported capital goods.

- Other foreign equity proposals including proposals involving 51% foreign equity which do not can the above mentioned criteria will require prior clearance.

- Foreign equity holding upto 51% equity will be permitted for trading companies primarily engaged in export activities.

- A foreign investment promotion Board has been set up to Negotiate and clear proposals with direct foreign investment in select high technology areas and those which would provide access to world markets. The investment programme of such predetermined parameters or procedures.

- Import of components. Raw materials and Intermediate goods and payment of know how fees and royalties will be governed by policy laid down from time to time.
(D) Foreign Technology Agreements:

- Automatic permission will be granted for foreign technology agreements in specified high priority industries (As per Annexdix III) where the lump sum payment is up to Rs. 1 Crore and 5% Royalty for domestic sales and 8% for exports. This is subject to take payments of 8% of sales over a 10 (Ten) years period from the date of agreement or 7 years from commencement or production.

- For industries other than those specified above, automatic permission will be given subject to the same guidelines, if no foreign exchange is required for any payment.

- Permission is not necessary for hiring foreign technicians or foreign testing of indigenously developed technologies.

(E) Foreign Institutional Investment:

- Foreign institutional investors, such as pension funds, mutual funds, investment trust, assets management companies Nominees companies and incorporated/in institutional portfolio managers or their power of attorney holders can invest under certain guidelines.

- FLLS must obtain initial registration with securities exchange Board of India, before
they make any investment in the securities of companies listed on the Indian stock exchange.

- FIIS allowed to invest in all the securities trades on the primary and secondary markets.

- Nominee companies of affiliates and subsidiary companies of an FII will be treated as separate FLLS for registration and must seek separate registration with SEBI.

- SEBI's initial registration and Reserve Bank of India's general permission under foreign exchange Regulation Act. will be valid for time years, with both renewable for further five years.

- Disinvestment will be allowed only through stock exchange in India including the CTC exchange. In exceptional cases, SEBI will permit Sales other than through stock exchanges.

- No restriction on the volume of investment for the purpose of entry of FLLS in the Primarily/Secondary market. No lock in period for the purpose a such investment made by FLLS prescribed.

- Portfolio investment in primarily or secondary markets in subject to a ceiling of 24% of issued share capital for the total holdings
of all registered FLLS in any one company.

- The holding of a single FLL in any one company is subject to a ceiling of five percent of total issued capital. For this purpose the holdings of an FLL group to be counted as holdings of a single FLL.

- The maximum holding of 24% of all Non Resident portfolio investment includes non resident India corporate and Non corporate Investment but not foreign investments under financial collaborations and investments by FLLS through off share single/regional funds, global depository receipts and euroconvertibles.

- Tax rate on long-term capital gain (one year or more) will be 10 percent.

- The tax rate on dividend and interest income will be 20%.

(2) **Business Forms:**

The most appropriate form of business for foreign investment is a limited liability company. As on proprietary and partnership form are the other business forms prevalent in India but due to unlimited liability for debts they are not normally found suitable by overseas investors.

Under the present policy of the Government,
all companies have to be incorporated in India under the companies Act to carry on in India any trading, manufacturing or commercial Activities. Only foreign banks airlines and shipping companies are permitted to carry on business in India through branches.

Indian companies are classified into two categories public and private companies. A company restructuring the right to transfer its shares, limiting the number of its members to fifty and prohibiting public subscription to its shares capital is a private company. Company.

Any other company is a public company. In certain circumstances a private company is deemed to be a public company. The companies act has wider regulations for public companies in respect of management borrowings and dealing the members and creditor due to greater public participation.

(A) Company Formation:

The formation of a company required
- Selection of a Name.
- Determination of the State in which the registered office will be situated.
- Drafting a memorandum and articles of Association which mention the objects for which the company is formed, its capital and regulations for its internal management.
Preparation of documents for submission to the registrar of companies for registration along with the requisite fees.

The Registrar office verifies the documents submitted and that all the formalities necessary for company formation have complied with then certified under his hand that the company is formed the company then emerges as a legal entity with limited liability.

(B) **Memorandum and Articles of Association:**

The memorandum of Association of a company defines the objects for which the company is in existence. The company can not operate beyond the scope of business activities defined in memorandum of promoters and a minimum of two in case of a private company.

The Articles of Association are the internal regulations for the conduct of the affairs of the company. The Articles of Association can not go beyond the scope of the memorandum of Association.

(C) **Issue of shares:**

Issue of shares requires compliance of various provisions of the companies act. A prospectus, is a document which offers detailed disclosure with regard to the company, its directors, its part working and future projections, contracts which it has entered
into and other details. The company can issue shares to the public only after a copy of the prospectus has been filed with the Registrar.

(D) **Directors and Management:**

The foreign investors can safeguard his interest in the Indian company by actively participating in the management. Non-resident directors, other than a Non resident managing director, can serve on the Board of an Indian companies under the companies Act, one third of the directors need not retire, by rotation and therefore, it is not unusual for the foreign investor to have the right to nominate directors, who need not retire by rotations. Provision also exist in the companies Act for the appointment of alternative directors to act in place of the original director. It is common practice for the foreign investor to have Indian legal and accounting professionals to act as alternate director's as their nominees to protect the foreign investor's interest in the Indian companies.

(E) **Monopolies and Restrictive Trade Practice:**

The legal frameowrk for monopolies and Restructive trade practices (M.R.T.P.) is the Monopolies and Restructive trade practice Act. 1969 an important piece of economic legislation. The M.R.T.D.legislation in other
countries, such as United States of America and United Kingdom. The trust of the Act is in controlling unfair or restrictive business practices.

(F) The Trade and Merchandise Marks Act:

The trade and Merchandise marks act provides for Registration and protection of trade marks and to prevent the use of praudtutent trademarks on marchandise, registration of a trademark unless registered with the authorities can not claim exclusive rights of user of his trademark.

Under foreign colledgeation agreement the Government does not permit use of foreign brand names for internal sales. These is no specific law in India for protection of intellectual property rights.

(G) Exchange Control:

Foreign exchange regulation Act attempts to conserve foreign exchange sollution resources and ensure that they are used for the economic development of India. It extends to the whole of India and also applies to citizens to the erer the world and to branches and agencies outside India of companies or bodies corporate, registered or incorporated in India. Compliance with the act is supervised by the Central Government and Reserve Bank of India. FERA places restrictions on transactions between
residents and non-residents. The determination of residential status under FERA is therefore important.

Persons resident in India are classified into Indian citizen and foreign citizens.

Indian citizens are resident if,

1. They are persons who were in India at any time after 25th March, 1947 and have not gone out of India for employment, vacation, business or some other purpose for an uncertain period.

2. They are persons who have returned to India for an indefinite stay after having become Non-resident at sometime after 25th March, 1947.

3. They are persons who have not stayed in India after 25th March, 1947 but have come to India for employment, vacation, business or some other purpose indicating their intention to stay in India for an uncertain period.

Foreign citizens are resident in India if they are in India for employment, vacation, business or living with their spouses or for any other purpose indicating an indefinite stay. A person resident outside India has been defined as a person who is not resident in India.

Authorised dealers (All Scheduled Banks) and licensed money changers are the only persons authorised
under FERA to transact foreign exchange and foreign currency business respectively in India.

All monetary transactors between persons resident in India and persons resident outside India require general or special permission of the Reserve Bank of India. There are no restrictions on import of securities into India but permission of the Reserve Bank of India is necessary for taking or sending any securities (including shares, bonds and debentures) outside India. Issue or transfer of securities to Non-residents requires the prior approval of the Reserve Bank of India.

Permission of the Reserve Bank of India is required to be obtained by all Non-residents, residents foreign citizens branches of foreign companies operating in India and Indian companies having more than 40% Non-resident share holding for.

- Carrying on in India any trading, commercial or Industrial activity.
- Establishing a place of business in India to carry on such activity.
- Acquiring the whole or part of any business or industrial under taking in India.
- The purchase of shares in Indian companies.
- Accepting appointment or acting as technical or management advisor in India or any person or company.
- Permitting its trademark to be used by any person or company for any direct or indirect consideration.
- Acquiring, holding transferring, disposal by sale, Mortgage, gift lease or more than 5 Years, settlement or otherwise, of any immovable property situated in India.

The New Industrial policy announcements for foreign investments and technology agreements state that FERA will be amended to provide for automatic approval of 52% foreign equity in high priority Industries pending amendment, Government clear foreign investment proposal that comply with the New policy by using special power under FERA.

Representation of foreign capital require permission of the Reserve Bank of India and the Govt. sale proceeds of the Government (including capital appreciation) and income from such investments are allowed to be sepatrialia income tax clearance must be obtained. Prior to remittance of capital and income.

(3) **Finance:**

Industrial units in India obtain finance primarily through two main sources.

- Internal sources to capital and Reserve or internal accruals.
External sources: to through New capital issues by way of shares, debentures or bonds, term borrowings, borrowings for working capital and Government subsidies.

(A) Capital Issue:

Capital issues by companies are supervised by the securities exchange Board of India which is empowered to regulate the financial structure of joint stock companies and provide a safeguard for the investing public.

(B) Stock Market:

Shares of many joint stock companies are quoted on recognised a stock exchanges. The stock market of India regulated under the securities contracts (Regulation) Act there are 14 recognised stock exchange which offers organised market for shares, debentures Bonds and government securities shares can be listed on a stock exchange, if at least 40% of the share capital, in the companies is held by the public. It is generally stipulated that all large joint ventures with foreign entrepreneurs should have the shares of the company quoted on a recognised, stock exchange.

An over the counter exchange of India (OTC) operate as on alternative to the stock market. Listing of shares on the OTC exchange will be permitted if at least 20% of the shares capital in the company is held by the public.
(C) **Term Borrowing:**

India has a well organised capital market with several financial Agencies which provide from borrowings, guarantees and underwritings facilities to the industrial sector. The principal agencies for term borrowings are the All India Institutions, commercial banks and State Financial corporations.

There are four all India Institutions, the Industrial Development Bank of India (IDBI), The industrial financial corporation of India (IFCI), The Industrial Credit and Investment Corporation of India and the Industrial Recognition Bank of India Assistance from IDBI and ICICI is available for setting up New Industrial projects, expansion, diversification, and modernisation of existing activities for period of 8-10 years with a grace period of 2-3 years. The main purpose for which the funds are available is to acquire capital Goods, Rupees and foreign currency loans are given by these institutions IRBI has been set up for the rehabilitation of unprofitable ventures in the country.

Commercial Banks provide term loans and specialise the providing working capital for industrial sector.

Most states in the country have and investment corporation which provides term finance for new projects, expansion, diversification and modernisation upto a max.
of Rs. 30 Million. Normally, State financial corporation and State Industrial and Investment corporations lend money to small and medium scale industries having project cost up to Rs. 50 million.

**D) Foreign Borrowings:**

Industrial Business in the country augment their resources if necessary, by borrowing from the international capital market, several developed countries provide Government credit which is tied to imports of capital goods from these countries.

**E) Government subsidies:**

The government of India others financial incentives to selected Industries located in designated backward areas. They are:

- Out right subsidy upto 15% of the fixed capital investment or Rs.1.5 million, which ever is higher.
- Loans at concessional rate of interest from financial institutions.
  State Government after additional incentive they are:
  - Cash subsidies.
  - Sales tax exemption or intt. free sales tax loans.
  - Exemption from local entry taxes generally known
an active, power, subsidy and electricity duty exemption.

(4) **Labour Relations:**

India has a large pool of trained scientific, technical and management personal.

There are comprehensive legislation which protects staff from arbitrary dismissal and requires payment of retrenchment compensation on termination of services. Trade unions play a powerful role in business over a certain size and legislation requires the recognition of trade unions.

There are no requirement for employees representation on the board of directors. There is considerable legislation on relations between employees and employers for:

- Regulation working condition and term of employment and
- Providing employee benefits, collective bargaining and settlement of disputes through agencies constituted by law.
- 5% of public issue by companies of shares and debentures is reserved for preferential allotment to the employees of the company.

(5) **Investment by non resident Indians:**

(A) **Non Resident Investment:**

The Government is offering a number of facilities
and incentives to Non-resident investment. The Govt. has constituted a special approval committee under the chairmanship of secretary, Department of Industrial Development. The committee will decide and monitor the progress of all applications received from Non-residents regarding Industrial Investments involving (a) Industrial licences/registration/permission (b) Foreign collaboration and (c) import of capital goods.

Investment facilities are open to Non-residents without right to repatriation and with right of repatriation.

(a) **Without right of Repatriation:**

Non-resident of Indian origin can invest in

(i) New issues of public or private companies engaged in any business activity (except real estate business) upto 100 percent of the issued capital without any obligation to associate resident Indian participation in equity capital at any time.

(ii) Shares of existing companies through Stock Exchange, Subject to specified conditions.

(iii) Deposits with forms and companies.

(iv) Both convertible and Non-convertible debenture through Stock exchange in India or out of new issues of Indian companies.
With Right of Repatriation:

(a) Non-Residents of Indian origin as well as companies and other corporate bodies owned to the extent of at least 60 percent by the Non-Resident of Indian origin can make investment in shares quoted on stock exchanges in India with full benefits of repatriation of capital and income earned there on provided:
I. The shares are purchased through the stock exchange.
II. Scrips so acquired will have to be retained by the Non-resident Indians for a minimum period of one year from the date of registration.

(b) Non-Resident of Indian origin can invest in Non-convertible debenture through Stock Exchange as well as direct investment in issue of such debenture with full repatriation benefits.

(c) They can invest in convertible debenture through stock exchange with repatriation benefits upto 1 percent of the total paid-up value of convertible debentures in each series issued by the companies.

(d) Non-residents of Indian origin can invest in deposit of 3 years, maturity with public limited companies with full repatriation rights.

In all these investments, payment should be made
either by fresh remittances from abroad or from Non-resident External accounts in India.

Special facilities for setting up Industrial Units:

The following facilities are available to Non-residents of Indian origin to set up a New Industrial units or participate in the expansion or Diversification of an existing unit or to set up a servicing unit in India.

(i) They can import capital goods (New and second hand) Except banned types without any value limit.

(ii) The restriction an import of banned types of capital goods may also be relaxed, where the machinery in question has been used by the applicant for at least one year before his return to India or where the CIF value of such machinery is not more than 10 percent of the CIF value of the total machinery being allowed for import.

(iii) They can import generating set of rating 500 KVA and above.

(iv) They can import office equipment and furniture used by them aboard up to rupees one lack (when new) for use in their industry in India.

(v) They can import computer system if they have been using it aboard for at least one year before returning to India provided its CIF value is not more than Rs.5 lacs. whether neww or old where the
computer is an integrat built in part of the equipment which is being allowed for import.

(vi) They can import prototypes.

(vii) They can import cement for construction of factory building.

(viii) They can import raw materials, components, consumable spares for meeting the requirement of their Industry set up three years (one year at a time) subject to a maximum of Rs.5 lacs. each year. This facilities will also be available in cases where the machinery is not imported but purchased indigenously.

(ix) They can import machinery except banned types for agricultural production/development provided they are returning to India for permanent settlement.

Source: Industrial Finance - FRANCIS CHERUNILAM.

(B) Non-Resident Indians:

The Government of India actively encourages investment in India by Indian and person of Indian origin resident abroad.

Non resident Indians are those who come under any of the following categories.

- Indian citizens who stay abroad for employment or for carrying on business or violation or any other purpose in circumstances indicating an identifiable period of stay outside India.
Government servants deputed absorbed on assignment with foreign governments or regional/international agencies like World Bank IBRD and WHO.

Officials of State Governments and Public sector undertakings deputed abroad on temporary assignments or posted to their branches or offices abroad.

Non-resident Indians become residents of India only when they return to India for employment or for carrying or for carrying on any business or vocation or any other purpose indicating and indefinite stay in India, and Not when they come back on short visits for holidays or business.

Facilities available to Non-resident Indians are also made available to Non-resident foreign citizen of Indian origin.

A person is deemed to be of Indian origin if he at any time held an Indian passport or he or either of his parents or any of his grand parents was an Indian and a permanent resident in India at any time. A spouse of a citizen of India or of a person of Indian origin is deemed to be of Indian origin through of Non-Indian origin.

(C) **Overseas Corporate Body (OCBS):**

Overseas corporate Body' means any overseas company, Partnership firm, society and other corporate body, predominately owned directly or indirectly to the extent
of at least 60% by Non-resident Indians and includes any overseas trust in which not less than 60% beneficial interest is held by Non-resident Indians, directly or indirectly but irrevocably.

**Bank Accounts:**

Non-resident Indians and persons of Indian origin can open the following accounts from funds remitted from abroad or out of funds legitimately due to them in India.

**(E) Non-resident (External) Bank Accounts:**

- These accounts can be maintained in the term of current, savings or fixed deposit account.
- Term deposits of one year and above carry interest at 2% higher than rates on domestic deposits of similar maturities.
- The entire credit balance (inclusive of interest earned there on) can be sepatriated outside India at any time.
- There are no restrictions on local disbursements from the account.
- Portfolio investment in equity/preference shares, Debentures of limited companies, investment ininnovable property, and proprietary concerns, units of unit trust of India and Government securities can be made from these accounts.
Income from and sale proceeds of investments made on repatriation basis can be freely credited to this account.

**Foreign currency (Non-resident) Account:**
- These accounts can be maintained in pound sterling and U.S. dollar.
- Amounts in these accounts can be held only as fixed period deposit.
- The account holder enjoys all the other benefits available in respect of NRE Account.

**Ordinary Non-resident accounts:**
- These accounts are opened by a resident account holder prior to his proceeding abroad for employment/business with and intention to stay abroad for an indefinite period.

**Investment without Repatriation Benefits:**
Non-residents of Indian Nationality or origin and OCBs are permitted to subscribe to shares/convertible debentures up to 100% of NRE Issues of companies engaged in financing of housing development, Development of property & construction of houses and construction of infrastructural facilities.

**Investment in New rights issues of Indian Companies:**
Non-residents of Indian Nationality or origin and
OCB's are permitted to subscribe without any limit to New Issues of shares/Debentures of any public and private limited companies which do not deal in real estate business (excluding property development construction of houses or in agricultural/plantation activities. Such investment are allowed upto 100% of the issued capital of the company.

(J) **Investment in Proprietary/Partnership firms:**

Non-Residents of Indian Nationality or origin are permitted to invest in proprietary/partnership firms upto 100% without any restriction on the business except that of dealing in land and immovable properties for commercial purposes and in agricultural/plantation activities.

(K) **Investment in Immovable Property:**

Foreign citizens of Indian origin are permitted to acquire one property for beneficial residential use of their family.

(L) **Portfolio Investment Scheme:**

Non-residents of Indian Nationality or origin and OCBS can make portfolio investment in equity/preference shares and convertible debentures of companies through a stock exchange in India, provided that
The purchase of share/convertible debentures on repatriation basis in any one company by each Non-Resident, does not exceed one percent of the paid up value of the equity and preference capital of the company concerned one percent of the total paid up value of each series of convertible debentures.

The purchase of equity shares and convertible debentures through stock exchange on both repatriation basis is subject to an overall ceiling of 24% of the total paid up value of each series of convertible debentures.

Investment in Non-convertible debentures enjoy full repatriation benefits for capital invested and income earned thereon.

(6) **High priority industries:**

Non-resident Indians and OCB's are permitted to invest upto 100% of the equity of a private/public limited company as well as partnership firms engaged in or proposing to be engaged in high priority industries listed in Appendix III subject to the following conditions:

- Foreign equity would cover the foreign exchange requirement for imported capital goods.
- The project proposed should not be located within 25 kms. of the standard urban areas.
limits of cities with population of 1 Million and above.

- An application required to be made to the Reserve Bank of India which grant automatic approval with repatriation benefits of capital invested and accrued income.

- The facility is also available for expansion and diversification of existing industrial undertakings.

(B) Other Industries:

Non-resident Indian and OCB's are permitted to invest 100% in hotels and tourism related industry, hospitals advanced diagnostic centres, shipping, export oriented deep sea fishing industry and oil exploration services with repatriation benefits of capital invested and accrued income. However, these proposals require prior clearance from secretarial for industrial approvals in ministry of industry.

(7) Mode of Investment:

Investment by Non-Resident III Indians must be made by remittance of foreign exchange from abroad or out of funds in NRE/FCNR accounts.

(A) Investment in Free Trade Zone:

The Indian Government has established six free
Some of the salient features of investment in free trade zones are as follows:

- Foreign ownership up to 100% can be considered if foreign technical skills and marketing capabilities are considered essential.
- The industrial units set up in these zones have to export at least 75% of the output and the remaining 25% can be sold in the domestic market against payment of certain taxes.
- Capital invested will enjoy full repatriation benefits in respect of the capital and earned thereon.
- General exemption is available from excise duty, central taxes as well as reduction in certain local taxes.
- Necessary approvals can be got at a single point.
- The holiday is available for the initial period of five years under the Indian Income Tax law.

(8) **Taxation:**

Non-residents of Indian nationality or origin
are charged to Indian Income tax at a flat rate of 20% on investment income and long term capital gains. Other income in India of a Non-resident Indian will be treated as a separate block and charged to tax in accordance with other provisions of the Income tax Act. A non Resident Indian Corporation.

A Non-resident Indian can opt that the special provisions of taxation of Income from foreign exchange Assets and long term capital gains at a flat rate of 20% should not apply to him. In such cases tax will be levied under the general provisions of the Income tax Act.

Non-residents shall be charged to capital gain on transfer of shares debentures in Indian companies on their computed gains in the foreign currency in which the purchase were made. Income of Non-residents from specified bonds or shares of an Indian company purchased in foreign currency and long term. Capital gains arising on their transfer is charged to tax at 10% profit arising to a Non-resident on transfer of specified bonds or shares to another Non-residents made outside India shall not be liable to any capital gains tax.

Non-resident Indians are exempt from wealth tax on Investments foreign exchange assets and inrespect of money and value of Assets brought into India and
value of Assets acquired by them out of such money without one year immediately proceeding the date of his return to India".

(9) **TAXATION IN INDIA**

(A) **Income Tax:**

India has a single Income tax law, which is the Income tax Act. 1961 and rules framed there under. The Indian constitutions prohibits state's from imposing tax on income other than income derived from Agricultural.

(B) **Assessment:**

Assessment of about 70% Non corporate tax payers with incomes or losses upto specified limits are completed in a summary manner by accepting the returns with adjustments for obvious inadmissible items. Assessment in the remaining cases are made after requisite scrutiny and, if required, after investigation. A certain Number of cases falling under the summary scheme are selected for detailed scrutinizing by random sample.

Assessments of a Non-resident can be made either directly or through his agent. In some cases an Income tax officer can treat a person in India as an agent of a Non-resident and collect taxes of the Non-resident through such agent.
(C) **Residence:**

The liability to tax under the income tax Act depends upon residential status, irrespective of the taxpayer's nationality or domicile.

An individual is said to be resident in India in any tax year if he is

- In India for a period amounting to 182 days or more in a tax year or
- In India for an aggregate period of 60 days or more (150 days or 182 days in certain cases) in the tax year and has been in India for an aggregate period of 365 days or more in the 4 tax years preceding that tax year.

A person is said to be "resident" but not ordinary resident' in India in any tax year of such person is .

- An individual who has not been resident in India in nine hour of ten tax years preceding that tax year.

- An individual who has not during the seven tax years preceding that year, been in India for a period or periods amounting to 730 days or more.

A non-residential is tax payer who is not resident in India. The residential status under other
direct tax laws is the same as under the Income Tax Act.

A company, whether Indian or foreign, is said to be resident in India if the control and management of its affairs is situated wholly in India.

A foreign company will have a part of its management. Control outside India and hence will be a Non-resident; there is no intermediary status of NOR for a company.

(D) **Scope of Total Income:**

A resident pays tax in India on his world income. A "Resident but not ordinary resident" pays tax in India on his Indian income and on foreign income derived from a business controlled in India or a profession set up in India. A non-resident pays tax in India on his Indian income and his foreign income is totally exempt from Indian taxes.

(E) **Taxable Income:**

The income of each assessee is determined under five heads—salaries, Income from house property, profit and Gains of Business or profession, capital Gains and Income from other sources.

Specified deductions are available from each
source and there are specific rules as to what constitutes income from each source.

Income under each head is computed after adjusting any loss against any income from source under the same head. The adjusted income for an assessment year is determined after adjusting income computed under each head against loss under any head in the same assessment year and unabsorbed depreciation of earlier years.

The only exceptions are capital losses and losses sustained in speculation business which may be set off only against capital gains or income from any other speculation business respectively. Such adjusted income is the gross total income. Gross total income, less certain specified deductions and tax incentives provided under the income tax law is the total taxable income of a tax payer.

Certain types of income and receipts have been fully except from tax and do not from part of gross total income.

(F) Special provisions for compulation of taxable

Income of Non-residents:

Taxable income on Non-resident individuals and foreign companies is computed at a flat rate varying from 5% to 10% of the amount paid or payable (Whether
in or outside India) or on behalf of the Assessee on account of the following:

- Business of exploration for mineral oils
- Business of operation of Aircraft
- Shipping Business
- Business of civil construction for turn key power projects. Income from prospecting for mineral oils is subject to certain conditions, eligible for special allowances in addition to permissible deductions available under the Act.

Interest income on specified securities/bonds is exempt from tax in case of Non-residents.

A limited exemption from Indian income tax is extended to foreign technical and Academic personnel.

(G) **Individual Taxation:**

Income tax rates for individuals regardless of the residential status are as follows:

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A surcharge of 12% is levied on tax payable by on assessee other than Non-resident if the income exceeds Rs.1,00,000/-.

(H) Corporate Taxation:

A foreign company under the income tax Act is a company which is not a domestic company.

A domestic company is an Indian company or any other company, which had made the prescribed arrangement for declaration and payment of dividends in India out of its taxable Indian income. A widely held domestic company is not a private company and is either controlled by the the Govt. or its equity shares are listed on a recognised stock exchange in India.

The corporate tax year is the year ended 31st March, and is taxed in the assessment year commencing on the succeeding 1st April.

Rates of Income tax for the year 1993-94 % of total taxable income

- Widely held domestic company 45
- Closely held domestic company 50
- Foreign company from sources 65
- Other than royalty and technical fees

A surcharge of 15% is levied on tax payable if the income of domestic company exceed Rs. 75,000/-.
Income of a foreign company from royalty, technical fees, dividends and interest is taxed at the following rates.

I. Types of Income

<table>
<thead>
<tr>
<th>Types of Income</th>
<th>% of Gross Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royalty &amp; fees for technical Services under certain Circumstances</td>
<td>30</td>
</tr>
<tr>
<td>Dividends</td>
<td>25</td>
</tr>
<tr>
<td>Interest</td>
<td>25</td>
</tr>
</tbody>
</table>

Tax may be paid by the Indian associates of a foreign company on the income of such foreign company and such tax will not be treated as income of the foreign company.

Domestic companies are entitled to deduct dividends earned by them from other domestic companies to the extent of the sum distributed by such domestic companies as dividends before the due date for filling their income tax returns.

(J) **Business Connections:**

Business connection is significant for a non-resident because any project earned by a Non-resident is taxable in India if it is earned through or from any business connection in India.
Business connection normally contemplates.

- A business in India.
- A connection between the Non-resident person and that business.
- A direct or an indirect earning the income by virtue of or through that connection.

A Business connection requires an element of continuity and a stay or is related transaction is not regards as a business connection. The existence of a business connection is a question of fact and would be based upon the circumstances of each case.

(K)

**Indirect taxes:**

- India has the following taxes.
- Excise duty is imposed on a large variety of manufactured items an advalorem basis or at specified rates. Modified value added tax (MODVAT) scheme eliminates excise duty levied on certain inputs used for the production of certain finished goods.
- Stamp duty is charged at varying rates for most documents executed in India.
- Central Sales tax is charged on sales within a state.
- State Sales tax is charged on sales within a state.
- Customs duty is charged on goods imported into or exported out of India.
- Octroi duty is a tax levied on entry of goods within city limits.

Source: PICUP - An investment Guide.