INDIA – US CROSS BORDER BUSINESS – A Guide to the Indian Tax and Regulatory Aspects

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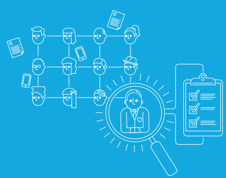

PREFACE

India is considered to be the fastest growing economy in the world, with an estimated growth rate of 7.3% for the current financial year 2015-16 in spite of uncertain global outlook (Source: IMF). With a GDP of US$ 8 trillion, India is now the third largest economy globally and the recent mega initiatives of 'Make in India' and 'Digital India' certainly make India an exciting market for global business community. This is of particular relevance to US being the largest economy in the world with a GDP of US$ 18 trillion. It has several large and mid-sized businesses with globally competitive products and services for which India can be a huge market and a base for manufacturing operations. Apart from the size and sustained growth of the economy, India has the world's largest democracy which has seen smooth shift of power 15 times over the past 6 decades and independent judiciary. The new visionary political leadership, favorable demographics with over 50% of the population below the age of 24 years and 65% of the population below the age of 35 years and large educated workforce has fuelled the growth.

India continues to remain the 'outsourcing destination of choice' of the world in sectors such as Information Technology, Pharmaceuticals, Banking and Finance, Insurance, Gems and Jewellery, Manufacturing, etc. This is mainly due to the ample availability of competent and cost efficient workforce. Increased emphasis has been laid by the policy makers on further integration of the economy with the global markets, viz. adopting convergence of the financial reporting standards with International Financial Reporting Standards (IFRS), laying foundation for implementation of the Goods and Services Tax (GST) and measures aimed at improving 'ease of doing business'.

India-US has improved their relationship significantly over the last decade and more specifically over the past one year. The **Honourable US President Barack Obama has described the strategic relationship between India and US as the "defining partnership of the 21st Century", while our Honourable Prime Minister Narendra Modi has characterized India-US partnership as a "natural alliance".** In the first vision statement between the two countries, in 2014, the motto of "Chalein Saath Saath: Forward Together We Go" was adopted for the India-US relationship and it was agreed "to work together not just for the benefit of our two nations, but for the benefit of the world."

This publication is aimed to bring out the potential for business between India-US and provide a broad outline of foreign investment regulations, tax and legal aspects in India, which can have a material impact on decision about making investment and conduct of business in India, specifically from the view point of US investors. In the last decade, we have seen several Indian companies making investments in the US for manufacturing, distribution and service activities. This publication also endeavours to provide an outline of the Indian tax, exchange control and other regulations relevant for such cross border investment. The relevant provisions have been presented in a user friendly manner. Pictographic depictions have been used wherever considered appropriate.

In this booklet, we have endeavoured to provide a quick overview of the following significant aspects, which are of interest to foreign investors contemplating investment in India:

- Foreign Exchange Regulations – Foreign Investments in India (including Permissible / Prohibited Sectors)
- Alternative Structures – Company / Liaison office / Project Office / Branch Office / LLP
- Tax Rates – Corporate & Employee Perspective
- Tax Incentives for Businesses in India
- Transfer Pricing Regulations in India
- Foreign Tax Credit
- Funding Options (including ECB)
- Repatriation of Profits

This publication cannot serve as a substitute for specific legal, tax or accounting advice concerning a business undertaking in India. The laws discussed here are subject to change and the regulatory environment in India is dynamic, therefore we would recommend that you seek professional advice if you would like to invest in India or expand your operations in India.

Happy Reading!

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ABBREVIATIONS

Terms	Definition
AAR	Authority for Advance Rulings
AD	Authorised Dealer Bank
ADB	Asian Development Bank
ADR	American Depository Receipt
CAGR	Compound Annual Growth Rate
CCEA	Cabinet Committee on Economic Affairs
CCI	Commodity Channel Index
CDC	Commonwealth Development Corporation
CIT	Corporate Income Tax
DCF	Discounted Cash Flow
DGFT	Directorate General of Foreign Trade
DGIT	Directorate General of Income Tax
DIPP	Department of Industrial Policy and Promotion
DR	Depository Receipt
DTA	Domestic Tariff Act
DTAA	Double Tax Avoidance Agreements
ECB	External Commercial Borrowings
FCCB	Foreign Currency Convertible Bonds
FCD	Fully Convertible Debentures
FCNR	Foreign Currency Non Resident Account
FCPS	Fully Convertible Preference Shares
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FERA	Foreign Exchange Regulations Act
FII	Foreign Institutional Investor
FIPB	Foreign Investment Promotion Board
FMC	Forwarding Market Commission
FPI	Foreign Portfolio Investment
FTS	Fees for Technical Services
FVCI	Forward Venture Capital Investment
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GST	Goods and Service Tax
ICDS	Income Computation and Disclosure Standards
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund

ABBREVIATIONS

Terms	Definition
INR	Indian National Rupee
IRDA	Insurance Regulatory and Development Authority Act , 1999
ISRO	Indian Space Research Organisation
IT Act	Income Tax Act, 1961
IVCU	Indian Venture Capital Undertaking
JV / WOS	Joint Ventures / Wholly Owned Subsidiaries
KYC	Know Your Customer
LLP	Limited Liability Partnership
LO / BO / PO	Liaison Office / Branch Office / Project Office
MAT / AMT	Minimum Alternate Tax / Alternate Minimum Tax
MRTP	Monopolies and Restrictive Trade Practices
MSE	Micro and Small Enterprise
NBFC	Non-Banking Financial Company
NCD	Non-Convertible Debentures
NRE	Non-Resident Rupee Account
NRI	Non-Residential Indian
NRO	Non-Resident Ordinary Rupee Account
OCB	Overseas Corporate Body
OCI	Overseas Citizenship of India
OECD	Organisation for Economic Cooperation and Development
PIO	Person of Indian Origin
PIS	Portfolio Investment Scheme
POEM	Place of Effective Management
PPP	Purchasing Power Parity
QFI	Qualified Foreign Investor
RBI	Reserve Bank of India
RFC	Resident Foreign Currency Account
RFPI	Registered Foreign Portfolio Investor
RNOR	Resident but Not Ordinary Resident
ROR	Resident and Ordinary Resident
Rs.	Rupee(INR)
SEBI	Securities Exchange Board of India
SEZ	Special Economic Zones
SPV	Special Purpose Vehicle
TDR	Transferable Development Rights
TRC	Tax Recidency Certificate
VCF	Venture Capital Fund

1.0

INTRODUCTION

Chapter 1 Introduction

1.1 A Snapshot – United States and India

Economy — KEY HIGHLIGHTS

Factors	United States	India
Government Type	Federal Republic and (Second largest Democracy in the World)	Federal Republic (Largest Democracy in the World)
Currency	US Dollar	Indian Rupee
GDP (2015)	18 trillion**	8 trillion (PPP)
GDP Rank	2nd largest economy in the world (PPP)	3rd largest economy in the world (PPP)
Growth Rate	2.6%	7.3%
Foreign Reserves	US$ 121 billion (as on 11th September, 2015)	US$ 350 billion (as on 2nd October, 2015)
Population	321 Million	1.25 Billion
****Nominal as well as PPP**		

1.2 INDIA — A Macro-Economic Perspective

Indian economy a "bright spot" in global landscape –International Monetary Fund (IMF)

1.2.1 The Republic of India is set to emerge as the world's fastest-growing major economy of the world. The size of the Indian Economy is estimated at US $2.308 trillion (GDP Nominal) and US $ 8.027 trillion in terms of Purchasing Power Parity (PPP) in October, 2015. India is ranked as the 3rd largest economy in the world in terms of Gross Domestic Product (GDP) at PPP.

The Foreign Policy Magazine in its present analysis on a vast number of parameters has rated India as the No.1 investment destination in the world.

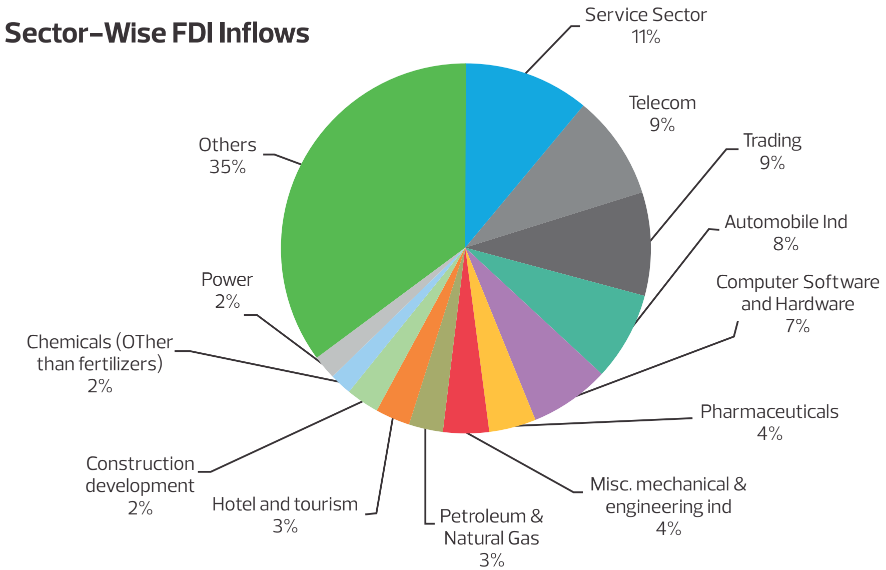
1.2.2 Apart from the size and sustained growth of the economy, India has the world's largest democracy which has seen smooth shift of power 15 times over the past 6 decades and independent judiciary. The new visionary political leadership, favorable demographics with over 50% of the population below the age of 24 years and 65% of the population below the age of 35 years and large educated workforce has fuelled the growth.

1.2.3 These factors certainly make India an interesting proposition for most businesses with an international presence.

1.3 Foreign Direct Investments in India

1.3.1 According to Department of Industrial Policy and Promotion (DIPP), the total FDI inflows into India increased by 24.5% to US$ 44.9 billion during FY 2014-15, as compared to US$ 36.0 billion in FY 2013-14. FDI outflows from India stood at US$ 30.9 billion in FY 2014-15 against US$ 36.9 billion in FY 2013-14.

1.3.2 Sectors like Services sector (including Financial, Banking, Insurance, Non-Financial / Business, Outsourcing, R&D, Courier, Tech. Testing and Analysis), Telecom sector, Trading, Automobile Industry, Computer Software and Hardware are among the top sectors that received the highest FDI inflows during the FY 2014-15.



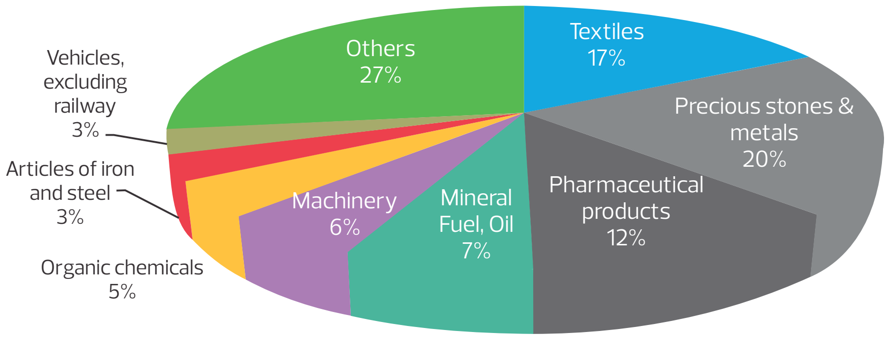
1.3.3 To make India as one of the most attractive manufacturing country, India has launched the "Make in India" campaign. Designed to attract foreign investment and manufacturing companies, Government of India is making major industrial policy changes. Giant industrial corridors featuring high-speed trains and superhighways are being planned to grow supporting infrastructure. Low labor cost per hour for manufacturing will also prove to be an asset for India in the coming years. Besides, the Government has also come up with Digital India initiative, which focuses on three core components: creation of digital infrastructure, delivering services digitally and to increase the digital literacy.

Frost & Sullivan, a US based agency has, on number of indicators, selected the Make in India initiative as the best initiative to drive manufacturing.

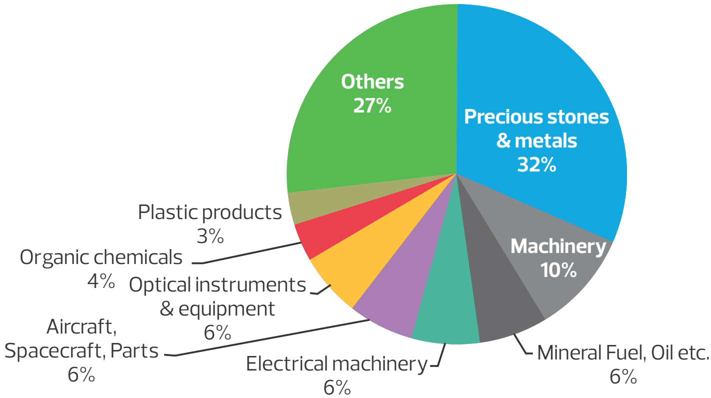
1.4 India-US Bilateral Trade

1.4.1 The US is one of India's largest trading partners. India-US bilateral trade has grown from a modest US$ 5.6 billion in 1990 to over US$ 66.9 billion in 2014. Indian exports accounted for US$ 45.2 billion; whereas, US exports stood at US$ 21.6 billion.

Major items of Export from India to U.S.



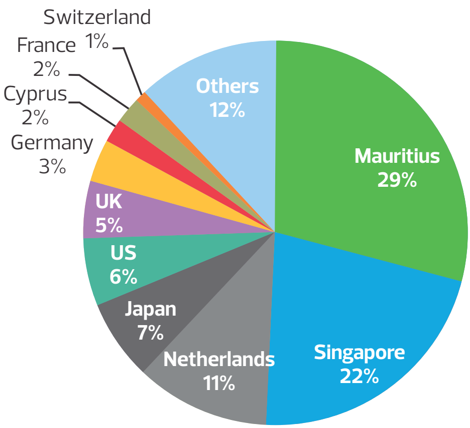
Major items of Import from U.S. to India



1.5 US Investments In India

1.5.1 India stands committed to have a Foreign Direct Investment policy and regime which is investor friendly and also promotes investment leading to increased manufacturing, job creation and overall economic growth of the country. While the direct investment from the US to India is about 6% of the total foreign direct investment, it is estimated that a significant amount of the US investment has flown into India indirectly through Mauritius and other intermediary jurisdictions due to favorable tax treaties.

Top FDI Equity Investing Countries

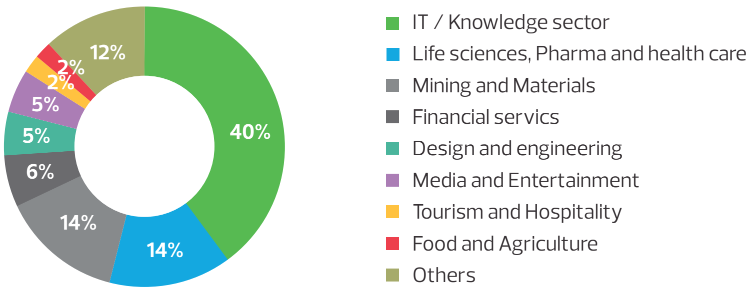


1.5.2 According to the US Bureau of Economic Analysis, US direct investments in India are estimated at US$ 28 billion in 2014. Areas like infrastructure, IT, Telecom sector, energy and other knowledge industries such as pharmaceuticals and biotechnology are the favored areas for economic cooperation between India and the US. Some of the major multi-national corporations of USA doing a profitable business in India are – General Electric, Whirlpool Ford (India), 3M, Tecumseh Products (India) Limited, Pepsi, Proctor and Gamble (India), Microsoft, Intel, Google, Oracle, IBM Corporation, etc.

1.6 Indian Investments In US

1.6.1 In recent years, growing Indian investments into the US has been a novel feature of bilateral ties. As per the Ministry of External Affairs, more than 65 large Indian corporations, including Reliance Industries Limited, Essar America, Tata Consultancy Services, Wipro and Piramal have together invested about US$ 17 billion in the US.

TOP SECTORS FOR OUTBOUND INVESTMENTS FROM INDIA INTO US



1.7 Way Forward

1.7.1 India continues to emerge as one of the most important markets in the developing world and an indispensable trading partner for the US which is clearly evident from the remarkable growth in India—US bilateral trade over the past years.

1.7.2 US and India are both large democracies with similar strategic issues from development to economic growth, terrorism to non-proliferation, and to achieve these goals concerted efforts are required from all stakeholders i.e., government, investors, corporates and entrepreneurs. However, one of the key challenges that stand as a hindrance to flourishing India – US relations is the challenge of doing business in India. The World Bank's Ease of Doing Business Ranking (As per doing business 2016, Report), ranks India 130th in terms of ability to enforce contracts and in ease of doing business, which includes regulatory approval and permits. The central government realizing the challenges poised on account of the Ease of Doing Business index, has taken several steps to improve the ease-of-doing-business environment in India. Further, in Indian context, different policies adopted in each of the states for dealing with foreign companies needs to be done away with and Pan-India policy should be adopted. The US government's restrictive visa policy and restrictions on technology transfer also pose a challenge to the growing strategic partnership.

1.7.3 Various government initiatives are emerging across different frontiers to overcome these challenges with focus on Make in India initiative, bilateral shared forum on manufacturing, and the India-US CEO Forum. Indian and US governments need to improve the business environment, provide tax incentives and simplify regulations.

2.0 INVESTING IN INDIA – FOREIGN EXCHANGE CONTROL REGULATIONS

Chapter 2 Investing in India – Foreign Exchange Control Regulations

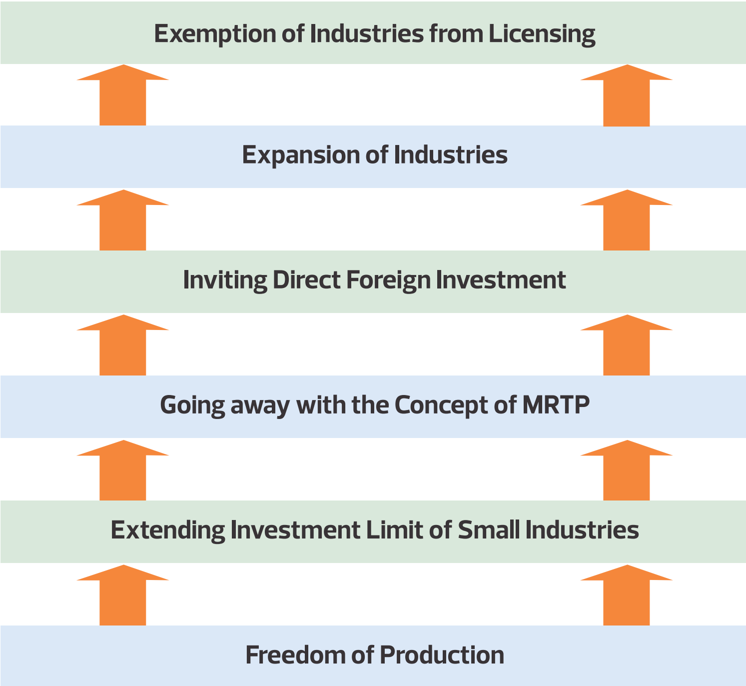
2.1 Background – Business Presence in India

2.1.1 The liberalization process started in India in 1991 and second-generation reforms which started in the first decade of 21st century have virtually opened up the Indian economy for foreign investment in most of the sectors, barring few sensitive sectors. The liberalization process has thrown open opportunities for inbound investment (foreign companies investing in India) as well as outbound investment (Indian companies investing out of India) in almost every field of business from the consumer durables sector to core infrastructure sector. The World Bank has appreciated the Indian liberalization reforms in one of its Annual Report stating *"India is moving rapidly towards closer integration with the global economy and the reform process, which has been brought about in such a short time, represents an irreversible movement towards a vibrant economy."*

2.1.2 In this process of liberalization, India has taken various measures like de-licensing, permitting foreign investment in various sectors, current account convertibility, liberalizing exchange control regulations, drastically reducing the rates of customs duty and direct taxes, permitting Indian companies to list on foreign stock exchanges and set up overseas operations, permitting resident Indians to buy shares and securities listed abroad etc.

2.2 Post-liberalization of the Economy – An Overview

2.2.1 The liberalization of the Indian economy saw six important measures being taken by the government which include (i) Exemption of industries from licensing; (ii) Expansion of Industries; (iii) Inviting Direct Foreign Investment; (iv) Going away with the concept of MRTP; (v) Extending Investment Limit of Small Industries; (vi) Freedom of Production.



2.2.2 The period from 2000 till date, has witnessed the increasing globalization of the Indian economy. In the year 2000, a paradigm shift occurred, wherein, except for a negative list, all the remaining activities were placed under the automatic route.

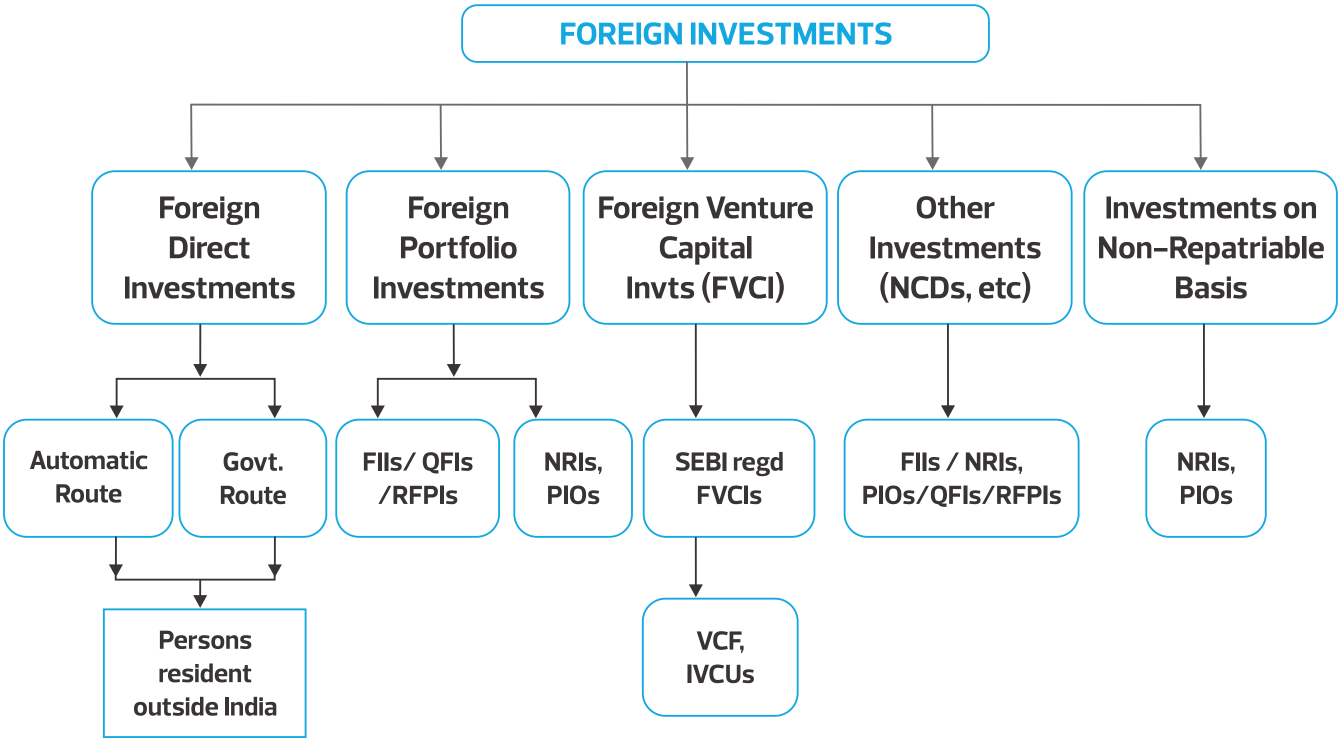
2.3 Foreign Exchange Regulations – Foreign Investments in India

2.3.1 Overview of Permissible Investment Avenues in India

In India, till 31 May 2000, foreign exchange transactions were regulated by Foreign Exchange Regulation Act, 1973 ('FERA'). FERA has been repealed by the Foreign Exchange Management Act, 1999 ('FEMA'), which has come into force with effect from 1 June 2000. The provisions under FEMA are liberal compared to provisions under FERA. The analysis of FEMA provisions contained herein is based on the updated Foreign Exchange regulations issued as at 1 July 2015.

The overview of all the permissible investment avenues in India is as diagrammatically represented hereunder:

Permissible Avenues for Investment in India



2.3.2 Investment in India by a person resident outside India / Eligibility for investing in India

- A person resident outside India or an entity incorporated outside India can invest in India, subject to the FDI Policy of the Government of India. A person who is a citizen of or an entity incorporated in Bangladesh/ Pakistan can invest in India under the FDI Scheme with the prior approval of the FIPB

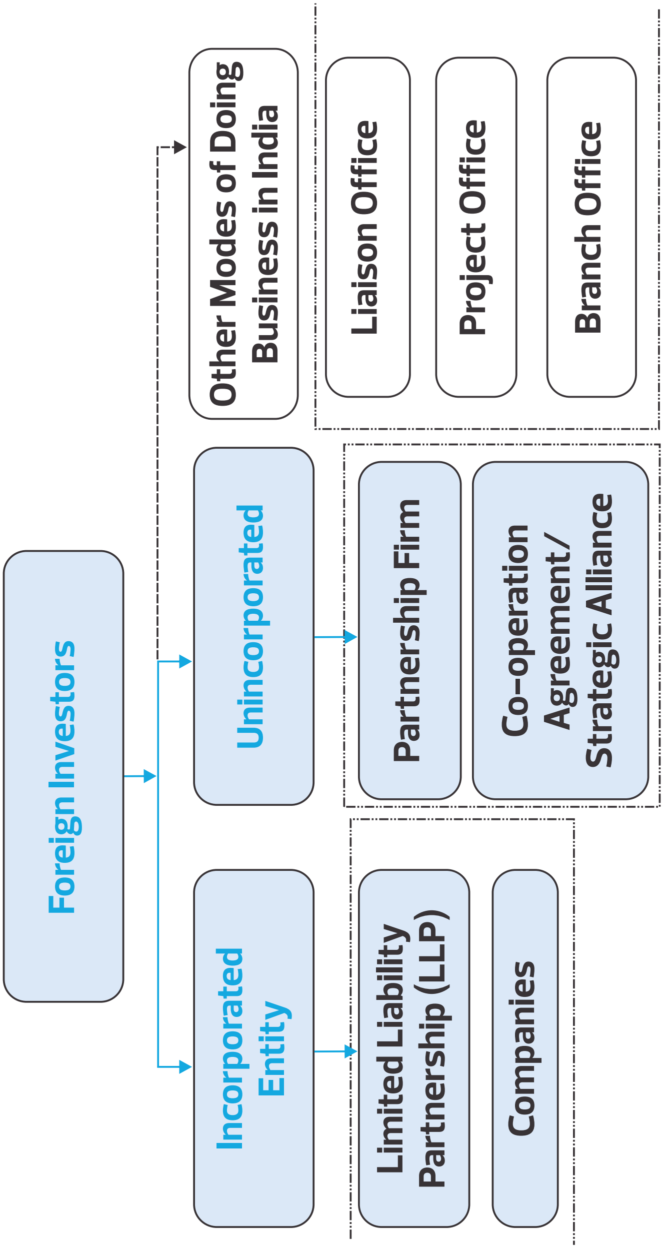
- NRIs, resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in shares and convertible debentures of Indian companies under FDI Scheme on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

- Overseas Corporate Body (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least 60% by Non-Resident Indians and includes overseas trust in which not less than 60% beneficial interest is held by Non-resident Indians, directly or indirectly, but irrevocably. OCBs have been de-recognized as a class of investors in India with effect from September 16, 2003.

- Erstwhile OCBs which are incorporated outside India and are not under adverse notice of Reserve Bank can make fresh investments under the FDI scheme as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government Route; and with the prior approval of Reserve Bank if the investment is through Automatic Route. A one-time certification shall be required to be obtained from the RBI through the AD Bank, that it is not in the adverse list being maintained with the RBI.

Inbound Investments – India Perspective

2.3.3 Inbound FDI – Forms of Permissible Inbound Investment Structures in India



2.3.4 Investment under Foreign Direct Investment ('FDI') Scheme

- **Entry routes for investments in India**

  - Foreign investment is freely permitted in almost all sectors. Under Foreign Direct Investments (FDI) Scheme, investments can be made by non-residents in the shares / compulsory convertible debentures of an Indian Company under two routes; Automatic Route and Approval / Government Route.

  - Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.

  - Under the Approval / Government Route, prior approval of the Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) is required.

  - Entry route for non-resident investors in India as well as sector specific investment limits in India are given in Annexure -1.

- **Automatic route of FDI**

  - The Government of India has substantially expanded the scope of foreign investment under the Automatic Route to include all items/ activities, except certain items, for investment under FDI. FDI up to 100% is allowed under the automatic route from foreign/NRI investors without prior approval in most of the sectors including the services sector. FDI in sectors/activities under automatic route does not require any prior approval either by the Government or RBI.

  - Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.

  - An Indian company receiving investments from outside India for issuing equity shares / convertible debentures / convertible preference shares under the FDI scheme, should report the details of the amount of consideration to the RBI within 30 days from the date of receipt of inward remittances.

- Foreign investment coming as fully convertible preference shares / fully convertible debentures would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed.

- Foreign investment coming as any other type of preference shares (non-convertible, optionally convertible or partially convertible) would be considered as debt and shall require compliance to External Commercial Borrowings (ECB) guidelines / ECB caps.

- **Approval Route of FDI (also referred to as the Government Route)**

  - Under the Approval Route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for the investment.

  - The Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs. 2000 crores (US$ 312 million appx.).

  - The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 2000 crores (US$ 312 million appx.) would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA).

  - The CCEA would also consider the proposals which may be referred to it by the FIPB/the Minister of Finance (in-charge of FIPB).

  - Online Filing of Applications for FIPB/Government's Approval - Guidelines for e-filing of applications, filing of amendment applications and instructions to applicants are available at FIPB's website (http://finmin.nic.in/) and (http://fipb.gov.in).

- **Brief Overview — Automatic and Approval Route**

AUTOMATIC ROUTE	APPROVAL ROUTE (FIPB Approval)
■ Allowed for most sectors / activities ■ Subscription as well as acquisitions are allowed ■ Limits : Sectoral caps/ stipulated sector specific guidelines ■ Inward remittances through proper banking channels** ■ Pricing guidelines prescribed** ■ Post facto filing of FDI report within 30 days of receipt of funds ** ■ Allotment of shares within 180 days from receipt of funds** ■ Filings of form FC-GPR within 30 days of share allotment ** ■ Includes Technical Collaboration / Royalty** ■ Filing of Annual Return of Foreign Liabilities & Assets**	■ Specified activities / sectors which requires approval ■ An application to be made to the FIPB in the Ministry of Commerce & Industry. ■ FIPB is empowered to approve the projects having FDI up to Rs. 20 billion (US$ 312 million) ■ Proposals exceeding Rs. 20 billion shall be approved by Cabinet Committee of Economic Affairs (CCEA) ■ **** To be complied in Approval route, as well**

- **Investments in sectors where 100% FDI under automatic route is not available**

RBI's Automatic Route is not available for foreign investment in Indian Company which is engaged in any activity, or in manufacturing of item included in Annexure 2. An Indian company which is not engaged in the activity or manufacture of items listed in Annexure 2 is permitted to issue shares or convertible debentures to a person resident outside India upto the extent specified in Annexure 1 on repatriation basis, subject to compliance with the prescribed provisions.

2.3.5 Sector Specific Conditions in FDI (Prohibited / Permissible Sectors)

- **Prohibited Sectors for FDI Route**

(A) All Activities/ Sectors would require prior approval of the Government of India for FDI in accordance with the FDI policy issued by Government of India from time to time.

The sector specific policy for FDI in prohibited sectors as specified in Annexure 2 is as under:

(B) **Sectors prohibited for FDI**

i. Lottery Business including Government/ private lottery, online lotteries, etc.

ii. Gambling and Betting including casinos etc.

iii. Chit funds

iv. Nidhi company

v. Trading in Transferable Development Rights (TDRs)

vi. Real Estate Business or Construction of Farm Houses

vii. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

viii. Activities / sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (except certain permitted activities).

Notes:

(i) "Real Estate Business" means dealing in land and immoveable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

(ii) It is further clarified that partnership firms / proprietorship concerns having investments as per FEMA regulations are not allowed to engage in print media sector.

(iii) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

(iv) FDI in Retail Trading which was earlier in the list of prohibited sector has been liberalized and w.e.f. 20 September 2012, the Government of India has permitted FDI in multi-brand product retailing, subject to certain conditions.

- **Permissible Sectors for FDI route**

The sector specific policy for FDI as specified in Annexure 1 is as under:

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/ regulations; security and other conditionality. In sectors/activities not listed below, FDI is permitted up to 100% on the automatic route, subject to applicable laws/ regulations; security and other conditionality.

Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
AGRICULTURE			
1	**Agriculture & Animal Husbandry**		
	a) Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions; b) Development and production of Seeds	100%	Automatic

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
	and planting material; c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and d) services related to agro and allied sectors **Note: Besides the above, FDI is not allowed in any other agricultural sector/activity and is further subject to other specified conditions.**		
2	**Tea Plantation**		
2.1	Tea sector including tea plantations **Note: Besides the above, FDI is not allowed in any other plantation sector/activity and is further subject to other specified conditions.**	100%	Government
3	**MINING**		
3.1	**Mining and Exploration of metal and non–metal ores** including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; **subject to** the Mines and Minerals (Development & Regulation) Act, 1957. (FDI in this sector is further subject to some specified conditions.)	100%	Automatic
3.2	**Coal and Lignite**		
3.1	(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973 (2) Setting up coal processing plants like washeries, subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or	100% 100%	Government Government

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
	sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.		
3.3	**Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities**		
3.3.1	Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities **subject to** sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957) and such other conditions as specified.	100%	Government
4	**Petroleum & Natural Gas**		
4.1	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/ pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic
4.2	Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
	MANUFACTURING		
5	**Manufacture of items reserved for production in Micro and Small Enterprises)**		
5.1	FDI in MSEs [as defined under Micro, Small And Medium Enterprises Development Act, 2006 (MSMED, Act 2006)] will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any		

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
	industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Industries (Development & Regulation) Act 1951.		
6	**DEFENCE**		
6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 and such other specified conditions.	49%	Above 49% to Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
SERVICES SECTOR			
INFORMATION SERVICES			
7	**Broadcasting**		
7.1	**Broadcasting Carriage Services**		
7.1.1	(1) **Teleports** (setting up of up-linking HUBs/ Teleports); (2) **Direct to Home** (DTH); (3) **Cable Networks** (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4) **Mobile TV**; (5) **Headend-in-the Sky Broadcasting Service** (HITS)	49%	Automatic up to 49% Government route beyond 49% and up to 74%
7.1.2	**Cable Networks** (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs).	49%	Automatic
7.2	**Broadcasting Content Services**		
7.2.1	**Terrestrial Broadcasting FM (FM Radio)**, subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting (MoIB), for grant of permission for setting up of FM Radio stations.	26%	Government
7.2.2	**Up-linking of 'News & Current Affairs' TV Channels**	26%	Government
7.2.3	**Up-linking of Non-'News & Current Affairs' TV Channels / Down- linking of TV Channels subject to compliance with relevant policies notified by MoIB.**	100%	Government
7.3	(Further foreign investment in the aforesaid sector will be subject to certain specified security conditions.)		

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
8	**Print Media**		
8.1	Publishing of Newspaper and periodicals dealing with news and current affairs.	26% (FDI and investment by NRIs/PIOs/ FII/RFPI)	Government
8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs. (Subject to certain conditions as specified).	26% (FDI and investment by NRIs/PIOs/ FII/RFPI)	Government
8.3	Publishing / printing of Scientific and Technical Magazines / specialty journals / periodicals, **subject to** compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
8.4	Publication of facsimile edition of foreign newspapers. (Subject to conditions specified).	100%	Government
9	**Civil Aviation**		
9.1	The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services / Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions.		
9.2	**Airports**		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic upto 74% Government route beyond 74%

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
9.3	**Air Transport Services**		
	(1) Scheduled Air Transport Service / Domestic Scheduled Passenger Airline	49% FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service 74% FDI	74% FDI (100% for NRIs)	Automatic upto 49% Government route beyond 49% and up to 74%
	(3) Helicopter services / seaplane services requiring DGCA approval	100%	Automatic
	Note: the above are subject to further conditions as specified in the FDI policy		
9.4	**Other services under Civil Aviation sector**		
	(1) Ground Handling Services Subject to sectoral regulations and security clearance	74% FDI (100% for NRIs)	Automatic upto 49% Government route beyond 49% and up to 74%
	(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic
10	Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters.	100%	Automatic
11	**Construction Development: Townships, Housing, Built-up infrastructure**		
11.1	Construction-development projects (Subject to compliance of certain conditions).	100%	Automatic
12	**Industrial Parks – new and existing**	100%	Automatic

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
13	**Satellites – Establishment and operation**		
13.1	Satellites – Establishment and operation, subject to the sectoral guidelines of Department of Space / ISRO	74%	Government
14	**Private Security Agencies**	49 %	Government
15	**Telecom services (including Telecom Infrastructure Providers Category-I)**	100%	Automatic upto 49% Government route beyond 49%
16	**TRADING**		
16.1	(i) **Cash & Carry Wholesale Trading / Wholesale Trading (including sourcing from MSEs)**	100%	Automatic
16.1.1	Definition: Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce. Further, there are certain guidelines prescribed for Cash & Carry Wholesale Trading.		
16.2	**E-commerce activities**	100%	Automatic
	E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.		
16.3	**Single Brand product retail trading**	100%	Automatic upto 49%. Government

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
16.3	**Single Brand product retail trading**	100%	Automatic upto 49%. Government route beyond 49%
	The investment in the Single Brand product retail trading is further subject to certain specified conditions specified for branding, domestic sourcing, etc.		
16.4	**Multi Brand Retail Trading**	51%	Government
	FDI in multi brand retail trading, in all products, will be permitted, subject to the certain conditions, which include: Minimum amount to be brought in, as FDI, by the foreign investor, would be US $ 100 million. At least 50% of total FDI brought in the first tranche of US$ 100 million, shall be invested in 'backend infrastructure' within three years. At least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US$ 2.00 million. The investors shall maintain accounts, duly certified by statutory auditors. Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per the 2011 Census or any other cities as per the decision of the receptive State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking. The above policy is an enabling policy only and the State Governments/ Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. About 12 States including Union Territories have conveyed their concurrence for FDI in multi-brand		

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
	retail trading. Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi brand retail trading. Note: The aforesaid conditions are not representative of the complete set of prescribed conditions for investment in Multi Brand Retail Trading.		
	FINANCIAL SERVICES Foreign investment in other financial services , other than those indicated below, would require prior approval of the Government:		
F.1	**Asset Reconstruction Companies**		
F.1.1	'Asset Reconstruction Company' (ARC) (Subject to compliance of specified conditions).	100% of paid-up capital of ARC (FDI + FII/FPI)	Automatic up to 49% Government route beyond 49%
F.2	**Banking –Private sector**		
F.2.1	Banking –Private sector (Subject to compliance of specified conditions).	74% including investment by FIIs/RPFIs	Automatic upto 49% Government route beyond 49% and upto 74%
	Note: Setting up of a subsidiary by foreign banks (a) Foreign banks will be permitted to either have branches or subsidiaries but not both. (b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 % paid up capital to enable them to set up a wholly-owned subsidiary in India. (c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 % in a private bank.		

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
	(d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 % of the paid capital of the private sector bank is held by residents. (e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks. (f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI (g) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI.		
F.3	**Banking- Public Sector**		
F.3.1	Banking- Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20% (FDI and Portfolio Investment)	Government
F.4	**Commodity Exchanges**		
	1. Futures trading in commodities are regulated under the Forward Contracts (Regulation) Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.		
F.4.2	**Policy for FDI in Commodity Exchange** (Subject to compliance of specified conditions).	49% (FDI & FII/FPI) [Investment by Registered FII /FPI under Portfolio	Automatic

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
		Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	
F.5	**Credit Information Companies (CIC)**		
F.5.1	Credit Information Companies (Subject to compliance of specified conditions).	74% (FDI + FII/RFPI)	Automatic
F.6	**Infrastructure Company in the Securities**		
F.6.1	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations.	49% (FDI + FII/RFPI) [FDI limit of 26% and an FII/RPFI limit of 23 % of the paid-up capital]	Automatic
F.7	**Insurance**		
F.7.1	(i) Insurance Company (ii) Insurance Brokers (iii) Third party Administrators (iv) Surveyors and Loss Assessors (v) Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) Subject to certain conditions to be complied with.	49% {(FDI+FPI(FII,QFI)+NRI+FVCI+DR}	Automatic upto 26% Government route beyond 26% and up to 49%

Sl. No.	Sector / Activity	% of Equity/ FDI Cap	Entry Route
F.8	**Non-Banking Finance Companies (NBFC)**		
F.8.1	Foreign investment in NBFC is allowed under the automatic route in only the following activities subject to compliance of certain specified conditions: (i) Merchant Banking (ii) Under Writing (iii) Portfolio Management Services (iv) Investment Advisory Services (v) Financial Consultancy (vi) Stock Broking (vii) Asset Management (viii) Venture Capital (ix) Custodian Services (x) Factoring (xi) Credit Rating Agencies (xii) Leasing & Finance (xiii) Housing Finance (xiv) Forex Broking (xv) Credit Card Business (xvi) Money Changing Business (xvii) Micro Credit (xviii) Rural Credit	100%	Automatic
F.9	**Power Exchanges**		
F.9.1	Power Exchanges under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 subject to certain specified conditions.	49% (FDI + FII/RFPI	Automatic
17	**Pharmaceuticals**		
17.1	Greenfield	100%	Automatic
17.2	Brownfield	100%	Government
	Note: The investment in the Pharmaceuticals sector is further subject to such other conditions as specified.		

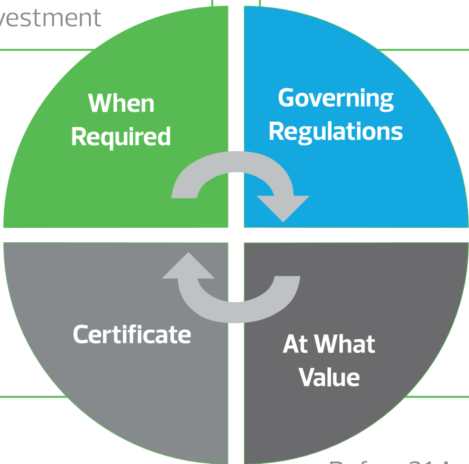
2.4 FDI Valuation / Pricing Guidelines – Certain important aspects

2.4.1 Applicability Overview

The provisions for valuation of shares/convertible instruments (such as Fully Convertible Preference Shares / Fully convertible Debentures) are covered in the Foreign Exchange Management (transfer or issue of Security by a Person Resident Outside India) Regulations, 2000. The brief valuation gamut is represented in the below matrix for ready reference.

- At the time of issue of shares/fully convertible instruments to non-resident
- At the time of transfer of shares/fully convertible instruments from resident to non resident or vice-versa
- Downstream Investment

- Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000



- From Chartered Accountant
- SEBI registered Merchant Banker

Before 21 April 2010, valuation based on CCI Guidelines.

- After 21 April 2010, DCF valuation to be followed
- W.e.f. 15 July 2014, internationally accepted method to be followed

2.4.2 Pricing Guidelines

i. Price of shares issued to persons resident outside India under the FDI Scheme, shall be on the basis of SEBI guidelines in case of companies listed on any recognized stock exchange in India. In case of companies not listed on any recognized stock exchange in India, valuation of shares has to be done on fair valuation basis by a Registered Category I Merchant Banker or a Chartered Accountant as per the Internationally Accepted Valuation Methodology on arm's length basis.

ii. The above pricing guidelines are also applicable for issue of shares against payment of lump sum technical know-how fee / royalty due for payment/repayment or conversion of ECB into equity or capitalization of pre incorporation expenses/import payables (with prior approval of Government).

iii. However, where non-residents (including NRIs) make investment in an Indian company in compliance with the provisions of the Companies Act, 2013, by way of subscription to Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

iv. The overview of the valuation methodology for Issue / Transfer of Shares is as under:

Indian Company	Issue of Shares to non-residents	Transfer of shares from resident to non-resident	Transfer of shares from non-resident to resident
Listed Companies	The price shall not be less than the price worked out in accordance with the SEBI guidelines.	Price shall not be less than the price at which a preferential allotment can be made under SEBI guidelines	Price of shares transferred by way of sale, by non-resident to resident shall **not be more than the minimum price** at which the transfer of shares can be made from a resident to non-resident as per column (c)
Unlisted Companies	Price shall not be less than the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a CA or SEBI registered Merchant Banker	Price shall not less than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a CA or a SEBI registered Merchant Banker.	

v. **Pricing for issue of Convertible Instruments**

- The Price / conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments.

- The price at the time of conversion should not be in any case be lower than the fair value worked out, at the time of issuance of such instruments.

vi. **Pricing of Optionally Convertible Instruments**

Optionality clauses are allowed in equity shares, FCPS and FCDs subject to following conditions:

- There is minimum lock-in period of 1 year which shall be effective from the date of allotment of such capital instruments.
- After the lock-in-period and subject to FDI Policy provisions, if any, the non-resident investor exercising option / right shall be eligible to exit without any assured return, as per pricing / valuation guidelines issued by RBI from time to time.

vii. **Pricing of Partly paid equity shares**

- The pricing of the partly paid equity shares shall be determined upfront and 25% of the total consideration amount (including share premium, if any), shall also be received upfront; The balance consideration towards fully paid equity shares shall be received within a period of 12 months.
- The time period for receipt of the balance consideration within 12 months shall not be insisted upon where the issue size exceeds Rs. 5000 million and the issuer complies with Regulation 17 of the SEBI (Issue of Capital and Disclosure Requirements (ICDR)) Regulations regarding monitoring agency.
- Similarly, in case of an unlisted Indian company, the balance consideration amount can be received after 12 months where the issue size exceeds Rs. 5000 million. However, the investee company

shall appoint a monitoring agency on the same lines as required in case of a listed Indian company under the SEBI (ICDR) Regulations. Such monitoring agency (AD Category -1 bank) shall report to the investee company as prescribed by the SEBI regulations, ibid, for the listed companies.

viii. **Pricing of Warrants**

- The pricing of the warrants and price/ conversion formula shall be determined upfront and 25% of the consideration amount shall also be received upfront. The balance consideration towards fully paid up equity shares shall be received within a period of 18 months.

- The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants, in accordance with the extant FEMA Regulations and pricing guidelines stipulated by RBI from time to time. Thus, investee company shall be free to receive consideration more than the pre-agreed price.

ix. **Pricing not relevant in following cases**

- FDI by way of subscription to Memorandum of Association to be made at Face Value subject to non-resident (including NRIs) eligibility to invest under the FDI policy.

- For transfer of shares between two non-residents under FDI policy.

x. **Other Aspects**

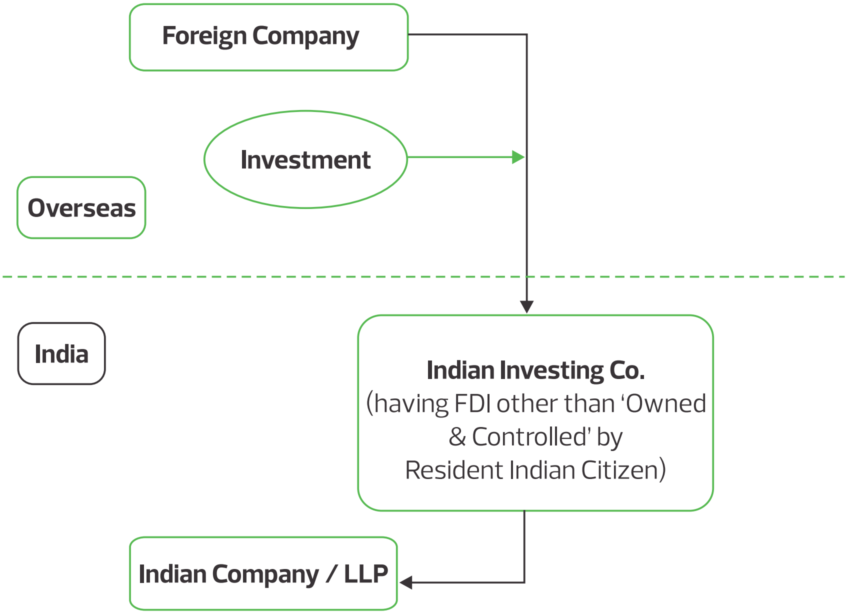
- The rate of dividend on preference shares issued by an Indian company to a person resident outside India should not exceed 300 basis points over the Prime Lending Rate of State Bank of India prevailing as on the date of the Board meeting of the company in which issue of such shares is recommended.

- Indian companies which are eligible to issue shares to persons resident outside India under the FDI Scheme will be allowed to retain the share subscription amount in a foreign currency account with the prior approval of RBI in order to meet any bonafide business purposes.

- Issue of shares by an Indian company to a person resident outside India which are not covered by above provisions would require approval of Secretariat for Industrial Assistance ('SIA')/ Foreign Investment Promotion Board ('FIPB').

2.5 Downstream Investments

2.5.1 'Downstream investment' means indirect foreign investment, by one Indian company into another Indian company, by way of subscription or acquisition whereas, Direct foreign investment' shall mean investment received by an Indian Company from non-resident entities regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6 and 8 of the Notification No. FEMA. 20/2000-RB dated May 3, 2000, as amended from time to time. Illustrative Representation of Downstream Investment is as under:



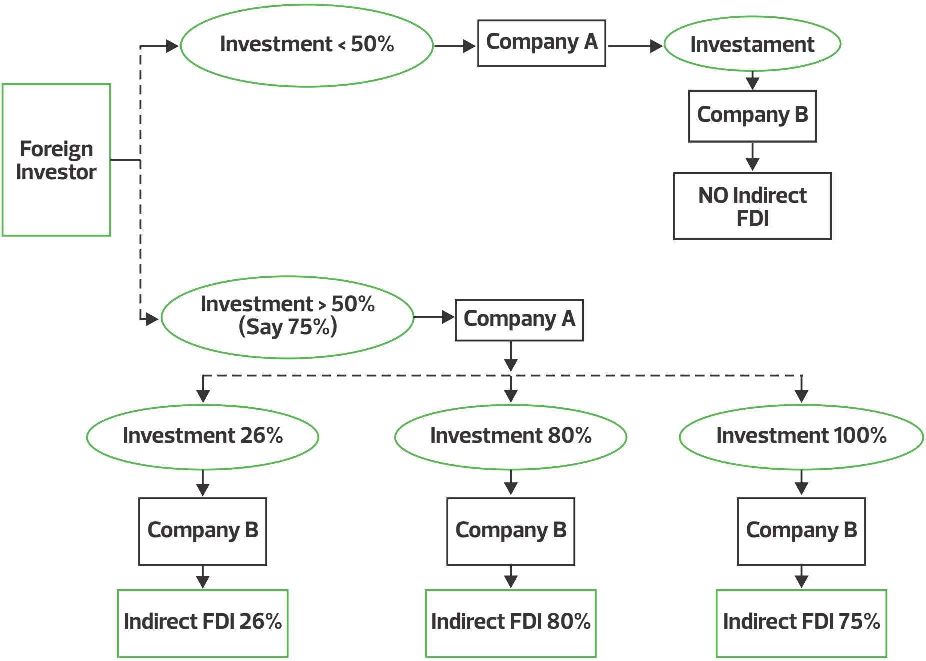
Indirect FDI ....

2.5.2 Foreign investment through investing Indian Co would not be considered for calculation of indirect foreign investment in case of Indian Cos which are 'owned and controlled' by resident Indian citizens.

2.5.3 In this context, 'Indirect foreign investment' means entire investment in other Indian companies by an Indian company, having foreign investment in it provided the Indian Company is not 'owned and controlled' by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens or where the Indian company is owned or controlled by non-residents.

2.5.4 However, as an exception, the indirect foreign investment in the 100% owned subsidiaries of operating-cum-investing/investing companies will be limited to the foreign investment in the operating-cum-investing/ investing company.

2.5.5 For ease of reference, the computation of Indirect / Downstream FDI is represented hereinbelow:



2.5.6 Downstream investment by an Indian company, which is not owned and/ or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

2.5.7 Downstream investments by Indian companies will be subject to the following conditions:

i. Such a company has to notify Secretariat for Industrial Assistance, DIPP and FIPB of its downstream investment in the form available at http://www.fipbindia.com within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

ii. Downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of its Board of Directors as also a Shareholders' Agreement, if any;

iii. Issue/transfer/pricing/valuation of shares shall continue to be in accordance with extant SEBI/RBI guidelines;

iv. The Indian companies making the downstream investments would have to bring in requisite funds from abroad and not use funds borrowed in the domestic market. This would, however, not preclude downstream operating companies, from raising debt in the domestic market

2.5.8 Downstream investments through internal accruals are permissible by an Indian company subject to the conditions specified in the FDI policy.

2.6 Compliance Requirements

2.6.1 Reporting of FDI

- Advance Reporting Form – Details of inward remittances is to be reported within 30 days from the date of such receipt or date of receipt of each call payment, in case of partly paid equity shares.

- Form FC-GPR – Details of issue of shares is to be reported within 30 days from the date of such issue (Refer para 2.6.2 for 'Timelines for Issue of Shares'). The same should be accompanied by share valuation certificate, compliance certificate from a CS and other specified documents. RBI allots UIN No. for initial intimation and Registration No. for allotment / issues.

  Note: Government has recently introduced an innovative digital platform viz. eBiz - India's G2B Portal under which Indian Companies can complete FDI compliances online, thereby eliminating physical interface. Presently, FDI reports in 'Advance Report Form' and form FC-GPR can be filed through e-Biz Platform (https://www.ebiz.gov.in/home).

- FLA return - To be filed by an Indian Company (receiving FDI or making overseas investment) directly with the RBI (fla@rbi.org.in) on or before 15 July every year

2.6.2 Timeline for Issue of Shares

- The equity instruments should be issued within 180 days from the date of receipt of the inward remittance or by debit to the NRE/FCNR (B) /Escrow account of the non-resident investor.

- In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B)/Escrow account, as the case may be.

- Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions.

- In exceptional cases, refund / allotment of shares for the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the Reserve Bank, on the merits of the case.

2.6.3 Reporting of transfer of Shares

- Form FC-TRS – Details of transfer of shares from Resident to Non-Resident and vice versa is to be reported within 60 days from the date of receipt / payment of the amount of consideration.
- AD Bank may ask to an Indian entity to submit the said form even in case of redemption of redeemable preference shares issued prior to 1 May 2007.
- No reporting requirement in case of transfer of shares from non-resident to another non-resident

2.6.4 Reporting on conversion of ECB into shares

- Filing of Form FC-GPR (specifying the shares issued) within 30 days from the date of conversion and Form ECB-2 within 7 working days from the end of the month in which conversion takes place

2.6.5 Non-compliance with the reporting requirements

- Non-compliance with the reporting requirements will be treated as a contravention under Section 13 of FEMA. Penalty on such contravention may be upto thrice the sum involved.

2.7 FDI Permissible in Limited Liability Partnerships (LLPs)

2.7.1 Limited Liability Partnership formed and registered under the Limited Liability Partnership Act, 2008 shall be eligible to accept Foreign Direct Investment (FDI) under Government approval route, subject to the following tabulated conditions:

Sl. No.	Particulars	Regulations
1)	Eligible Investors	A person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs

Sl. No.	Particulars	Regulations
2)	Exceptions	The following persons shall not be eligible to invest in LLPs: (i) a citizen/entity of Pakistan and Bangladesh or (ii) a SEBI registered FII or (iii) a SEBI registered FVCI or (iv) a SEBI registered QFI or (v) a Foreign Portfolio Investor registered in accordance with Securities and Exchange Board of India(Foreign Portfolio Investors) Regulations, 2014 (RFPI)
3)	Eligibility of LLP for accepting foreign Investment	(i) An LLP, existing or new, operating in sectors/activities where 100% FDI is allowed under automatic route of FDI Scheme would be eligible to receive FDI. (ii) An LLP engaged in the following sectors/activities shall not be eligible to accept FDI: ■ Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions (for example minimum capitalisation norms applicable to NBFCs or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects', etc.); or ■ Sectors eligible to accept < 100% FDI under automatic route; or ■ Sectors eligible to accept FDI under Government Approval route; or ■ Agricultural/plantation activity and print media; or ■ Sectors not eligible to accept FDI i.e. any sector which is prohibited under the extant FDI policy (Annex-A to Schedule 1 to Notification No. FEMA. 20/ 2000-RB dated

Sl. No.	Particulars	Regulations
		3rd May 2000) as well as sectors/activities prohibited in terms of Regulation 4(b) to Notification No. FEMA.1/ 2000-RB dated 3rd May 2000, as amended from time to time.
4)	Eligible investment	Contribution to the capital of a LLP would be an eligible investment under the Scheme. Note: Investment by way of 'profit share' will fall under the category of reinvestment of earnings
5)	Entry Route	Any FDI in a LLP shall require prior Government/FIPB approval. Any form of foreign investment in an LLP, direct or indirect (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government/FIPB approval
6)	Pricing	FDI in an LLP either by way of capital contribution or by way of acquisition / transfer of 'profit shares', would have to be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted/ adopted as per market practice (hereinafter referred to as "fair price of capital contribution/profit share of an LLP") and a valuation certificate to that effect shall be issued by a Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government. In case of transfer of capital contribution/profit share from a resident to a non-resident, the transfer shall be for a consideration equal to or more than the fair price of capital contribution/profit share of an LLP. Further, in case of transfer of capital contribution/profit share from a non-resident to a resident, the transfer shall be for a consideration which is less than or equal to the fair price of the capital contribution/profit share of an LLP.

Sl. No.	Particulars	Regulations
7)	Mode of payment for an eligible investor	Payment by an eligible investor towards capital contribution/profit share of LLPs will be allowed only by way of cash consideration to be received – i) by way of inward remittance through normal banking channels; or ii) by debit to NRE/FCNR(B) account of the person concerned, maintained with an AD Category – I bank.
8)	Reporting	i. LLPs shall report to the Regional Office concerned of the Reserve Bank, details of the receipt of amount of consideration for capital contribution and profit shares in Form FOREIGN DIRECT INVESTMENT-LLP(I), together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor in Annex 9-II, through an AD Category – I bank, and valuation certificate as regards pricing at the earliest but not later than 30 days from the date of receipt of the amount of consideration. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported. ii. The AD Category – I bank in India, receiving the remittance should obtain a KYC report in respect of the foreign investor from the overseas bank remitting the amount. iii. Disinvestment / transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) shall require to be reported within 60 days from the date of receipt of funds in Form FOREIGN DIRECT INVESTMENT-LLP(II)

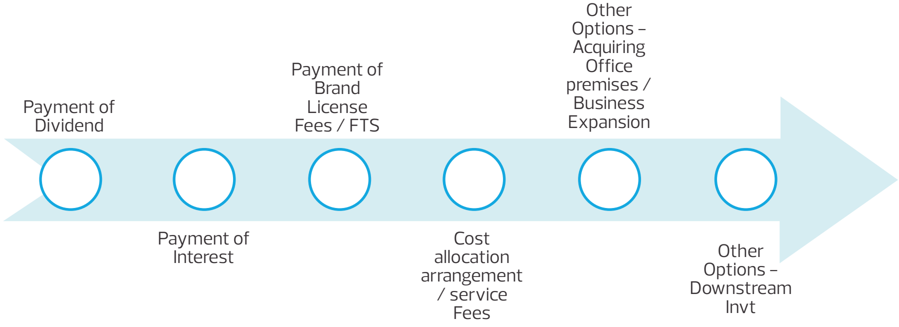
Sl. No.	Particulars	Regulations
9)	Downstream investment	a) An Indian company, having foreign investment (direct or indirect, irrespective of percentage of such foreign investment), will be permitted to make downstream investment in an LLP only if both, the company as well as the LLP, are operating in sectors where 100% FDI is allowed under the automatic route and there are no FDI-linked performance related conditions. Onus shall be on the LLP accepting investment from the Indian Company registered under the provisions of the Companies Act, as applicable, to ensure compliance with downstream investment requirement as stated above. b) An LLP with FDI under this scheme will not be eligible to make any downstream investments in any entity in India.
10)	Other Conditions	a. In case, an LLP with FDI, has a body corporate as a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the Limited Liability Partnership Act, 2008, such a body corporate should only be a company registered in India under the provisions of the Companies Act, as applicable and not any other body, such as an LLP or a Trust. For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the Limited Liability Partnership Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999. b. The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

Sl. No.	Particulars	Regulations
		c. Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except the stipulation as regards mode of payment) are met and with the prior approval of FIPB/Government. d. LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).

2.8 Repatriation of Profits / Capital

2.8.1 Under the Foreign Exchange regulations, there are no restrictions with respect to the repatriation of profits or capital or for remittances towards Brand Licence Fees or towards provision of services or towards payment of interest on debentures.

2.8.2 Further, there are no restrictions for usage of internal accruals of the Indian entity towards the business expansion or acquisition of office or factory premises. Downstream investment is also permissible, subject to the sectoral conditions specified in the FDI policy and the procedural compliances as required.



2.8.3 For a foreign eligible corporate investing in India, the investment decision is based on the returns which it shall earn on such investment and whether such investment suits the longer term business objective of the corporate as a whole.

2.8.4 The common avenue used for repatriation of accruals (in the form of profits) on such investment is to make payment of dividends to the shareholders.

2.8.5 The other modes of servicing the Indian entity is through provision of the License for brand usage / provision of services (Technical / Consultancy / Managerial) to the Indian entity, wherein Royalty / Fees for Technical Services (FTS) shall be charged and paid to the Foreign Service provider.

2.8.6 Debt servicing (Coupon rate on Debentures issued) by way of interest payment is also one of the modes of funding the Indian entity and servicing the debt.

2.8.7 The other alternative opted by foreign corporates with long term business objective in India include usage of the accruals (by way of profits/reserves) towards acquisition of office/factory premises, making downstream investment and business expansion.

2.9 Exit Options – by a Person Resident Outside India

The various exit options which can be opted by the foreign corporate, which has made investment under the FDI route includes the Transfer of Shares / Buy-back of Shares of the Indian entity.

2.9.1 Transfer of Shares by a Person Resident Outside India

- **Non-Resident to Non-Resident (Sale / Gift):** A person resident outside India (other than NRI and OCB) may transfer by way of sale or gift, shares or convertible debentures to any person resident outside India (including NRIs but excluding OCBs).

  Note: Transfer of shares from or by erstwhile OCBs would require prior approval of the Reserve Bank of India.

- **NRI to NRI (Sale / Gift):** NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

- **Non-Resident to Resident(Sale / Gift):**

  i. **Gift:** A person resident outside India can transfer any security to a person resident in India by way of gift.

  ii. **Sale under private arrangement:** General permission is also available for transfer of shares / convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India in case where transfer of shares are under SEBI regulations and where the FEMA pricing guidelines are not met, subject to the following

- The original and resultant investment comply with the extant FDI policy/ FEMA regulations;
- The pricing complies with the relevant SEBI regulations (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI (SAST) and buy back); and
- CA certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.
- Compliance with reporting and other guidelines as given in Annex 3 of the FDI Regulations.

Note: Transfer of shares from a Non-Resident to Resident other than under SEBI regulations and where the FEMA pricing guidelines are not met would require the prior approval of the Reserve Bank of India.

iii. **Sale of shares/ convertible debentures on the Stock Exchange by person resident outside India:** A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.

2.9.2 Buyback of Shares from a Person Resident Outside India / Capital Reduction Scheme

General permission is available under the Foreign Exchange regulations in India for transfer of shares by a non-resident to an Indian company under buyback and / or capital reduction scheme of the company.

a. **Buy-back of shares** - Companies can buy-back their own shares or other specified securities from their free reserves, share premium account or proceeds of any issue made specifically for buy-back purpose upto a limit of 25% of the total paid up capital and free reserves and such other conditions as specified in the Companies Act 2013.

b. **Capital Reduction** – Capital Reduction is permissible with approval from the Company Law Tribunal and subject to the conditions prescribed under the Companies Act 2013.

2.9.3 Remittance of sale proceeds

- AD Category – I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC / tax clearance certificate from the Income Tax Department has been produced.

2.9.4 Remittance on winding up/liquidation of Companies

- AD Category – I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, 2013. AD Category – I banks shall allow the remittance provided the applicant submits:

  i. No objection or Tax clearance certificate from Income Tax Department for the remittance.

  ii. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

  iii. Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 2013.

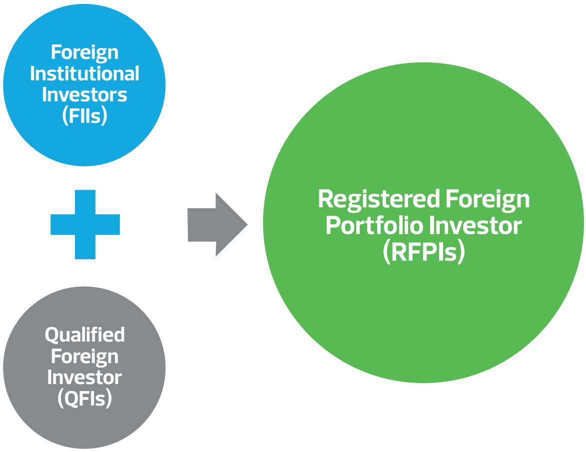
iv. In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

2.10 Other Foreign Investment Routes

2.10.1 Foreign Portfolio Investments

- The extant guidelines for Portfolio Investment Scheme (PIS) for Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) have since been reviewed and it has been decided to put in place a framework for investments under a new scheme called 'Foreign Portfolio Investment' scheme (Refer: RBI notification A.P. (DIR Series) Circular No.112 dated March 25, 2014).

- The portfolio investor registered in accordance with SEBI guidelines shall be called 'Registered Foreign Portfolio Investor (RFPI)'. The existing portfolio investor class, namely, Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) registered with SEBI shall be subsumed under RFPI



- RFPI may purchase and sell shares and convertible debentures of Indian company through registered broker on recognised stock exchanges in India as well as purchases shares and convertible debentures which are offered to public in terms of relevant SEBI guidelines/ regulations.

- RFPI may sell shares or convertible debentures so acquired :

  a. in open offer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; or

  b. in an open offer in accordance with the SEBI (Delisting of Equity shares) Regulations, 2009; or

  c. through buyback of shares by a listed Indian company in accordance with the SEBI (Buy-back of securities) Regulations, 1998.

- The individual and aggregate investment limits for the RFPIs shall be below 10% or 24% respectively of the total paid-up equity capital or 10% or 24% respectively of the paid-up value of each series of convertible debentures issued by an Indian company. Further, where there is composite sectoral cap under FDI policy, these limits for RFPI investment shall also be within such overall FDI sectoral caps.

- Any foreign institutional investor who holds a valid certificate of registration from SEBI shall be deemed to be a registered foreign portfolio investor (RFPI) till the expiry of the block of three years for which fees have been paid as per the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995. A QFI may continue to buy, sell or otherwise deal in securities subject to the SEBI (FPI) Regulations, 2014 for a period of one year from the date of commencement of these regulations, or until he obtains a certificate of registration as foreign portfolio investor, whichever is earlier.

- However, all investments made by that FII/QFI in accordance with the regulations prior to registration as RFPI shall continue to be valid and taken into account for computation of aggregate limit.

Certain Recent Developments on FDI Policy (Revision approved by Union Cabinet in July 2015, for which Notification is awaited)

Introduction of composite caps for simplification of Foreign Direct Investment (FDI) policy to attract foreign investments

The Union Cabinet chaired by the Prime Minister has given its approval to review the existing FDI policy on various sectors provided in the Consolidated FDI Policy Circular 2014, as amended by the Consolidated FDI Policy Circular 2015, by introducing composite caps for simplification of Foreign Direct Investment (FDI) policy to attract foreign investments. Following amendments to the relevant paragraphs of Consolidated FDI policy were approved:

Permissible Investment upto Sectoral Cap:

An FII/FPI/QFI (Schedule 2, 2A and 8 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, as the case may be) may invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI/QFI below 10 percent of the capital of the company and the aggregate limit for FII/FPI/QFI investment to 24 percent of the capital of the company. This aggregate limit of 24 percent can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI/QFI investment, individually or in conjunction with other kinds of foreign investment will not exceed sectoral/statutory cap.

Foreign Investment to include all types of foreign investment –

It is also clarified that Foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8 (QFI), 9 (LLPs) and 10 (DRs) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.

Computation of indirect foreign investment –

For the purpose of computation of indirect foreign investment, foreign investment in an Indian company shall include all types of foreign investments regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII holding as on March 31), 2A (FPI holding as on March 31), 3 (NRI), 6 (FVCI), 8 (QFI holding as on March 31), 9 (LLPs) and 10 (DRs) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.

2.10.2 Investments by Non-Resident Indians (NRIs)

- **On non-repatriation basis**

  i. NRIs can purchase shares, convertible debentures and warrants issued by an Indian company on non-repatriation basis without any limit. Amount of consideration for such purchase shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR (B) / NRO account maintained with the AD Category - I bank.

  ii. NRIs can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds. Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF. In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon will not be allowed to be repatriated abroad.

iii. NRIs can also invest in non-convertible debentures issued by an Indian Company, both on repatriation basis and on non-repatriation basis, subject to the other terms and conditions stated under Notification No FEMA 4/2000-RB dated May 3, 2000 (as amended from time to time).

iv. NRIs may also invest, both on repatriation and non-repatriation basis, in non-convertible/redeemable preference shares or debentures issued in compliance with Regulation 7 (2) of FEMA Notification No. 20.

- **On repatriation basis**

i. A NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

- **Salient features of Portfolio Investment Scheme (PIS) for investments by a Non-Resident Indian (NRI)**

a. An NRI intending to buy and sell shares / convertible debentures of an Indian company through a registered broker on a recognized stock exchange in India will apply in prescribed form to the designated branch of AD bank for participating in the Scheme on repatriation and / or non-repatriation basis.

b. While applying, the NRI should also undertake that :

i. the particulars furnished are true and correct;

ii. he has no dealing with/ he will not deal with any other designated branch/bank under PIS;

iii. he will ensure that total holding in shares / convertible debentures, both on repatriation and non-repatriation basis in any one Indian company at no time shall exceed 5 per cent of the paid up capital/ paid up value of each series of convertible debentures of that company.

Note: The purchase of equity shares in an Indian company, both repatriation and non-repatriation basis by each NRI shall not exceed 5% of the paid up capital of the company subject to an overall ceiling of 10% of the total paid-up capital of the company concerned by all NRIs both on repatriation and non-repatriation basis taken together.

c. Shares /convertible debentures acquired by the NRI under this permission can be sold on recognized stock exchange in India through registered broker without any lock in period. NRI shall not engage in short selling and shall take delivery of the shares and convertible debentures purchased and give the delivery of the shares and debentures sold.

d. Shares /convertible debentures acquired by the NRI under the Scheme shall not be pledged for giving loan to a third party without prior permission of RBI.

- **Investment in Partnership Firm / Proprietary Concern by NRIs**

1. **Investment in Partnership Firm / Proprietary Concern**

A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest by way of contribution to the capital of a firm or a proprietary concern in India on non-repatriation basis provided:

i. Amount is invested by inward remittance or out of NRE / FCNR(B) / NRO account maintained with Authorised Dealers / Authorised banks.

ii. The firm or proprietary concern is not engaged in any agricultural / plantation or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from) or print media sector.

iii. Amount invested shall not be eligible for repatriation outside India.

2. **Investments with repatriation benefits**

NRIs / PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns / partnership firms with repatriation benefits. The application will be decided in consultation with the Government of India.

3. **Investment by non-residents other than NRIs / PIO**

A person resident outside India other than NRIs / PIO may make an application and seek prior approval of Reserve Bank, for making investment by way of contribution to the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.

4. **Restrictions**

An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income therefrom) or engaged in Print Media.

- **Recent update — Review of FDI policy on Investments by NRIs, PIOs and**

OCIs – May 2015

The Union Cabinet chaired by the Prime Minister has given approval to review the FDI policy on investment by NRIs, PIOs and OCIs, though an official notification on this is awaited. The amendments approved by the Union Cabinet to be incorporated in the FDI policy include :

(1) **Definition of NRI**

'Non-Resident India' (NRI) means an individual resident outside India who is a citizen of India or is an ''Overseas Citizen of India' cardholder within the meaning of section 7(A) of the Citizenship Act, 1955. 'Persons of Indian Origin' cardholders registered as such under Notification No. 26011/4/98 F.I. dated 19.8.2002 issued by the Central Government are deemed to be 'Overseas Citizen of India' cardholders.

(2) **To provide that investment by NRIs on non-repatriable basis is domestic. Following new para approved to be added:**

'Investment by NRIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations will be deemed to be domestic investment at par with the investment made by residents.'

Note: The decision that the NRI includes OCI cardholders as well as PIO cardholders is meant to align the FDI policy with the stated policy of the Government to provide PIOs and OCIs parity with NRIs in respect of economic, financial and educational fields. Further, the decision that NRIs investment under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations will be deemed to be domestic investment made by residents, is meant to provide clarity in the FDI policy as such investment is not included in the category of foreign investment.

2.10.3 Investment by Foreign Venture Capital Investor

- A SEBI registered Foreign Venture Capital Investor (FVCI) with specific approval from RBI can invest in Indian Venture Capital Undertaking (IVCU) or Venture Capital Fund (VCF) or in a scheme floated by such VCFs subject to the condition that the domestic VCF is registered with SEBI. These investments by SEBI registered FVCI, would be subject to the respective SEBI regulations and FEMA regulations and sector specific caps of FDI.

IVCU – An IVCU is defined as a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI.

VCF – A VCF is defined as a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations.

- FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF or in units of schemes / funds set up by a VCF through initial public offer or private placement or by way of private arrangement or purchase from third party. Further, FVCIs would also be allowed to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time.

- At the time of granting approval, RBI permits the FVCI to open a non-interest bearing Foreign Currency Account and/or a non-interest bearing Special Non-Resident Rupee Account with a designated branch of an AD Category – I bank, subject to certain terms and conditions.

- A SEBI registered FVCI can acquire / sale securities (as given in (ii) above) by way of public offer or private placement by the issuer of such securities and /or by way of private arrangement with a third party at a price that is mutually acceptable to the buyer and the seller.

- AD Category – I banks can offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments has to be deducted from the eligible cover to arrive at the actual cover that can be offered.

2.11 Modes of Funding

2.11.1 External Commercial Borrowings (ECBs)

ECBs refer to commercial loans in the form of bank loans, securitized instruments (e.g. floating rate notes and fixed rate bonds, nonconvertible, optionally convertible or partially convertible preference shares), buyers' credit, suppliers' credit availed of from non-resident lenders with a minimum average maturity of 3 years.

ECB can be accessed under two routes, viz., (i) Automatic Route and (ii) Approval Route.

- **Automatic Route – Brief Overview**

  The overview of the ECB provisions under the automatic route is tabulated hereunder:

Sl. No.	Particulars
1)	**Eligible Borrowers**
	(a) Corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956), Non-Banking Finance Companies (NBFCs) - Infrastructure Finance Companies (IFCs), NBFCs - Asset Finance companies (AFCs), Small Industries Development Bank of India (SIDBI) except financial intermediaries, such as banks, financial institutions (FIs), Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs), other than those specifically allowed by Reserve Bank, are eligible to raise ECB. Individuals, Trusts (other than those engaged in Micro-finance activities) and Non-Profit making organizations are not eligible to raise ECB.
	(b) Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area (DTA).

Sl. No.	Particulars
	(c) Corporates in the services sector viz. hotels, hospitals and software sector. (d) Companies in miscellaneous services sector (only from overseas direct / indirect equity holders and group companies). Companies in miscellaneous services mean companies engaged in training activities (but not educational institutes), research and development activities and companies supporting infrastructure sector. Companies doing trading business, companies providing logistics services, financial services and consultancy services are, however, not covered under the facility.
2)	**Recognised Lenders**
	Borrowers can raise ECB from internationally recognized sources, such as (a) international banks, (b) international capital markets, (c) multilateral financial institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions, (d) export credit agencies, (e) suppliers of equipment, (f) foreign collaborators and (g) foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)] A "foreign equity holder" to be eligible as "recognized lender" under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below: i. For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender (all outstanding ECBs including the proposed one), ii. For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1(all outstanding ECBs including the proposed one), ECB from indirect equity holders is permitted provided the indirect equity holding in the Indian company by the lender is at least 51 per cent. ECB from a group company is permitted provided both the borrower and the foreign lender are subsidiaries of the same parent.

Sl. No.	Particulars
3)	**Amount and Maturity**
	a. The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors, and corporate in miscellaneous services sector is USD 750 million or its equivalent during a financial year. b. Corporates in the services sector viz. hotels, hospitals and software sector and miscellaneous services sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.
4)	**All-in-cost ceilings**
	All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost. Average Maturity – 3 years & upto 5 years – 350 basis points* Average Maturity – more than 5 years – 500 basis points* *All-in-cost ceilings over 6 months LIBOR
5)	**End-use**
	a. ECB can be raised for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units in real sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, viz. hotel, hospital and software and miscellaneous services sector as given at I(A)(i)(j) above. Infrastructure sector is defined as (a) Energy which will include (i) electricity generation, (ii) electricity transmission, (iii) electricity distribution, (iv) oil pipelines, (v) oil/gas/liquefied natural gas (LNG) storage facility (includes strategic storage of crude oil) and (vi) gas pipelines (includes city gas distribution network); (b) Communication which will include (i) mobile telephony services / companies providing cellular services, (ii) fixed network telecommunication (includes optic fibre / cable networks which provide broadband / internet) and (iii) telecommunication towers;(c) Transport which will include (i) railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading / unloading terminals, stations and

Sl. No.	Particulars
	buildings), (ii) roads and bridges, (iii) ports, (iv) inland waterways, (v) airport and (vi) urban public transport (except rolling stock in case of urban road transport);(d) Water and sanitation which will include (i) water supply pipelines, (ii) solid waste management, (iii) water treatment plants, (iv) sewage projects (sewage collection, treatment and disposal system), (v) irrigation (dams, channels, embankments, etc.) and (vi) storm water drainage system; (e) (i) mining, (ii) exploration and (iii) refining;(f) Social and commercial infrastructure which will include (i) hospitals (capital stock and includes medical colleges and para medical training institutes), (ii) Hotel Sector which will include hotels with fixed capital investment of Rs. 2000 million and above, convention centres with fixed capital investment of Rs. 3000 million and above and three star or higher category classified hotels located outside cities with population of more than 1 million (fixed capital investment is excluding of land value), (iii) common infrastructure for industrial parks, SEZs, tourism facilities, (iv) fertilizer (capital investment), (v) post harvest storage infrastructure for agriculture and horticulture produce including cold storage, (vi) soil testing laboratories and (vii) cold chain (includes cold room facility for farm level pre-cooling, for preservation or storage or agriculture and allied produce, marine products and meat. b. Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad. c. ECB is allowed for Import of services, technical know-how and payment of license fees. The companies in the manufacturing and infrastructure sectors may import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions. d. ECB for general corporate purposes from direct foreign equity holders by companies in manufacturing, infrastructure, hotels, hospitals and software sector: Eligible borrowers can avail ECB from their direct foreign equity holder company with a minimum average maturity of 7 years for general corporate purposes (which includes working capital) subject to the following conditions: (i) Minimum paid-up equity of 25% should be held directly by the lender; (ii) Such ECBs would not be used for any purpose not permitted under

Sl. No.	Particulars
	extant the ECB guidelines (including on-lending to their group companies / step-down subsidiaries in India); and Repayment of the principal shall commence only after completion of minimum average maturity of 7 years. (iii) No prepayment will be allowed before maturity
6)	**End-uses not permitted**
	Other than the purposes specified hereinabove, the borrowings shall not be utilized for any other purpose including the following purposes, namely: (a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets]. (b) for real estate sector. (c) for general corporate purpose which includes working capital (other than what has been given at I(A)(v)(I) above) and repayment of existing rupee loans. Note: The proceeds of the ECBs should not be used for acquisition of land.

- Approval Route

  Certain proposals which are not considered in the automatic route are covered in the approval route, and are subject to the conditions as prescribed in the extant ECB policy.

- Compliance With ECB Guidelines

  - The primary responsibility to ensure that ECB raised/utilised are in conformity with the ECB guidelines and RBI regulations / directions is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under FEMA 1999.

  - The designated AD bank is also required to ensure that raising / utilisation of ECB is in compliance with ECB guidelines at the time of certification.

2.11.2 Other Hybrid Instruments of Funding

The applicability of the foreign exchange regulations are tabulated hereunder:

<table>
<tr><th>Modes of finance</th><th>Fully paid-up Equity share capital</th><th>Compulsorily and Mandatorily Convertible Preference Shares (‘FCPS’)</th><th>Compulsorily and Mandatorily Convertible Debentures (‘FCDs’)</th></tr>
<tr><td></td><td>(a)</td><td>(b)</td><td>(c)</td></tr>
<tr><td>Legal Provisions</td><td colspan="3">Foreign Direct Investment (‘FDI’) by way of Equity shares or Compulsorily and Mandatorily Convertible Preference Shares (‘FCPS’) or Compulsorily and Mandatorily Convertible Debentures (‘FCDs’) is permissible under the automatic route in case the activity of such investee company is not restricted / prohibited activity and is subject to specified sectoral cap of the FDI Regulations.</td></tr>
<tr><td>Issue Price / Valuation</td><td>In case of a newly incorporated company, who are subscribers to its Memorandum of Association, such investments may be made at face value
With reference to further issue of shares, price of shares issued to persons resident outside India shall not be less than
■ the fair valuation of shares done by a SEBI registered Category – I Merchant Banker or a Chartered Accountant as per Internationally Accepted Pricing Methodology on Arm's length basis,</td><td>Same as (a)
Further, at the time of issue of FCPS, conversion price / conversion formula shall be specified upfront.
Notably, at the time of conversion, the issue price shall not be less than the fair value of shares at the time of issue of the convertible instrument.</td><td>Same as (a)
Further, at the time of issue of FCDs, conversion price / conversion formula shall be specified upfront.
Notably, at the time of conversion, the issue price shall not be less than the fair value of shares at the time of issue of the convertible instrument.</td></tr>
</table>

Modes of finance	Fully paid-up Equity share capital	Compulsorily and Mandatorily Convertible Preference Shares ('FCPS')	Compulsorily and Mandatorily Convertible Debentures ('FCDs')
	(a)	(b)	(c)
	where the shares of the Indian company is not listed on any recognised stock exchange in India		
Limit on rates / all-in-cost ceilings	No limit prescribed on the rate of dividend on equity shares. However, the same needs to be paid out of present and/or past profits of the Company.	The rate of dividend on preference shares shall not exceed State Bank of India's PLR + 300 basis points.	No limit prescribed on the rate of Interest on FCDs. Though rates should be in consonance with the general business practices and justifiable as per Indian Transfer Pricing provisions.
End-use restrictions	No end use restriction prescribed except for making downstream investment in any other Indian Company, for which separate guidelines are prescribed.		

2.12 Establishment in India of a Branch or Liaison office or Project Offices in India

Companies incorporated outside India, desirous of opening a Liaison/Branch Office or Project Office in India shall apply to the AD –Category I Bank subject to the conditions prescribed by the RBI.

2.12.1 Opening up of Liaison Office / Branch Office in India

(a) Foreign companies/entities desirous of setting up of Liaison Office / Branch Office (LO/BO) are required to submit their application in prescribed form along with the documents specified to the RBI through an Authorised Dealer bank.

(b) The applications from such entities in Form FNC will be considered by the RBI under two routes:

i. **Reserve Bank Route** – Where principal business of the foreign entity falls under sectors where 100% Foreign Direct Investment (FDI) is permissible under the automatic route.

ii. **Government Route** – Where principal business of the foreign entity falls under the sectors where 100% FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non – Government Organisations / Non – Profit Organisations / Government Bodies / Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

(c) The following additional criteria are also considered by the RBI while sanctioning Liaison/Branch Offices of foreign entities:

Sl. No.	Additional criteria	Requirements
1)	**Track Record**	
	For Branch Office	a profit making track record during the immediately preceding 5 financial years in the home country.
	For Liaison Office	a profit making track record during the immediately preceding three financial years in the home country.
2)	**Net Worth**	
	For Branch Office	not less than USD 100,000 or its equivalent
	For Liaison Office	not less than USD 50,000 or its equivalent
	Note: Net Worth means [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name]	

(d) Permission to set up Liaison offices is initially granted for a period of 3 years and this may be extended from time to time by the Authorised Dealer in whose jurisdiction the office is set up. The Branch / Liaison offices established with RBI's approval will be allotted a Unique Identification Number (UIN) (www.rbi.org.in/scripts/Fema.aspx). The BOs / LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.

(e) Liaison/Branch offices have to file an Annual Activity Certificate (AAC) from the Auditors, as at end of March 31, along with the audited Balance Sheet on or before September 30 of that year, stating that the Liaison Office has undertaken only those activities permitted by Reserve Bank of India. In case the annual accounts of the LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet.

(f) LOs/BOs are required to furnish copy of the Annual Activity Certificate (AAC) to Director General of Income Tax (International Taxation) of the concerned state. Copies of the AACs submitted to the DGIT (International Taxation) should be accompanied by audited financial statements including receipt and payment account.

(g) Further, at the time of renewal of permission of LOs by AD banks, they may note to endorse a copy of each such renewal to the office of the DGIT (international Taxation).

2.12.2 Setting up of Project Office in India

RBI has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

i. the project is funded directly by inward remittance from abroad; or

ii. the project is funded by a bilateral or multilateral International Financing Agency; or

iii. the project has been cleared by an appropriate authority; or

iv. a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

Note: However, if the above criteria are not met or if the parent entity is established in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau, such applications have to be forwarded to the RBI for approval.

2.12.3 Activities permitted in India to Liaison office

i. Representing in India the parent company/group companies.

ii. Promoting export import from/to India.

iii. Promoting technical/financial collaborations between parent/group companies and companies in India.

iv. Acting as a communication channel between the parent company and Indian companies.

2.12.4 Activities permitted in India to Branch office of a Foreign Company

i. Export/Import of goods.

ii. Rendering professional or consultancy services.

iii. Carrying out research work, in areas in which the parent company is engaged.

iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.

v. Representing the parent company in India and acting as buying/selling agent in India.

vi. Rendering services in Information Technology and development of software in India.

vii. Rendering technical support to the products supplied by parent/group companies

viii. Foreign airline/shipping company.

2.12.5 Certain General Conditions – Applicable to Liaison / Branch / Project Office of Foreign Entities in India

i. Without prior permission of RBI, no person being a citizen of/ registered in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau can establish in India, a Branch or a Liaison Office or a Project Office or any other place of business.

ii. Proprietary concerns set up abroad are not allowed to establish Branch /Liaison/Project Offices in India.

iii. Entities from Nepal are allowed to establish only Liaison Offices in India.

iv. Branch/Project Offices of a foreign entity, excluding a Liaison Office are permitted to acquire property for their own use and to carry out permitted/incidental activities but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Nepal, Bhutan, China, Hong Kong and Macau are not allowed to acquire immovable property in India even for a Branch Office. These entities are allowed to lease such property for a period not exceeding five years.

v. Branch / Liaison / Project Offices are allowed to open non-interest bearing INR current accounts in India.

vi. Powers relating to transfer of assets of Liaison / Branch Office/Project Office have been delegated to AD Category-1 Banks subject to compliance with certain stipulations as mentioned in A.P.DIR (Series Circular) No. 142 dated June 12, 2014.

vii. Authorised Dealers can allow term deposit account for a period not exceeding 6 months in favor of a branch/office of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the branch / office furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/airline companies.

viii. Permission to establish offices, in India by foreign Non-Government Organisations/Non-Profit Organisations/Foreign Government Bodies/Departments, by whatever name called, are under the Government Route as specified in A. P. (DIR Series) Circular No. 23 dated December 30, 2009. Such entities are required to apply to RBI for prior permission to establish an office in India, whether Project Office or otherwise.

2.12.6 Certain Compliance Requirements with Respect to LO/BO/PO

i. LO/BO/PO shall submit a report containing prescribed information within five working days of becoming functional to the Director General of Police (DGP) of the state concerned in which LO/BO/PO has established its office; if there are more than one office of such a foreign entity, in such cases to each of the DGP concerned of the state where it has established office in India.

ii. LO/BO/PO shall submit a copy of the report with the DGP concerned on annual basis along with a copy of the Annual Activity Certificate/Annual report required to be submitted by LO/BO/PO concerned, as the case may be.

iii. A copy of report thus filed as above shall also be filed with AD by LO/BO/PO concerned.

2.12.7 Remittance of profit

Remittance of profit by a branch or remittance of surplus after completion of the project by the project office will be allowed by the authorized dealer on submission of documents specified in the regulation issued by RBI.

3.0

INVESTING IN INDIA – TAXATION AND OTHER REGULATORY ASPECTS

Chapter 3 Investing in India – Taxation and Other Regulatory Aspects

3.1 India Taxation – Corporate Perspective

3.1.1 Residency Rules

- Broadly, the options available for setting up a presence in India are as follows:

  - **Operating as a Separate Legal Entity** – This could be in the form of a wholly owned subsidiary company or a joint venture (with an Indian entity or another foreign company) or a Limited Liability Partnership (LLP). However, this shall be subject to compliance with Foreign Direct Investment (FDI) policy.

  - **Operating as a Foreign Company** – This could be in the form of a representative/ Liaison Office, Branch Office or Project Office.

- **Overview of Residency Rules**

  Residency rules have an important role to play in determining the scope of total income of a taxpayer chargeable to tax in India. Under the Income Tax Act, residence based taxation is applied for residents and source based taxation for non-residents.

Resident

- **A resident in India is liable to tax in India on his world-wide income.**

Non-resident

- **A non-resident in India will be liable to tax in India only in respect of accruals and receipts in India (including deemed accruals and receipts).**

- **Company Incorporated in India (having FDI)**

  - The tax residence of corporate entity is based on either place of incorporation (legal seat) or location of effective management (real seat). A company incorporated in India (i.e. it is an Indian company) will always be treated as resident in India.

- **Other business entities set up in India (having FDI)**

  A registered partnership firm or Limited Liability Partnerships ("LLP") will be resident in India if the control and management of their affairs are wholly or partly situated within India at any time in the relevant financial year.

  In India, Partnership firms and LLP, are not considered as 'transparent' or 'pass through' entities and are regardless of their residential status, subject to entity level tax (plus surcharge and cess, as applicable).

  LLPs and partnerships firms are subject to income tax (plus surcharge and cess, as applicable) but profit distribution to owners (i.e. partners of the firm) is exempt from tax in the hands of partners.

- **Foreign Company Operating in India**

  - A foreign company can either be resident or non-resident in India. It will be treated as resident in India if, in the financial year, the place of effective management is situated in India (From FY 2015-16 onwards). Please refer para 4.20 for detailed discussion.

  - In other cases, it will be treated as non-resident in India and the Income attributable to its operations in India shall be subject to tax in India.

  - **Entity characterization** – A foreign enterprise undertaking business activities in India is characterized, for tax purposes, as having the same legal form it holds in the country of its origin. For example, a foreign company carrying on business activities through a branch office or project office shall be characterized as a foreign company for tax purposes in India and be liable to tax accordingly, subject to the provisions of the relevant tax treaty.

3.1.2 Tax Rates

- **Domestic companies**

The effective corporate tax rates for domestic companies for FY 2015-16 is as follows:

Domestic Company	Effective Tax Rates
Having total income exceeding Rs. 100 million	34.61% [(tax rate 30% plus surcharge 12% thereon) plus education cess 3% thereon]
Having total income exceeding Rs. 10 million but not exceeding Rs. 100 million	33.06% [(tax rate 30% plus surcharge 7% thereon) plus education cess 3% thereon]
Having total income upto Rs. 10 million	30.90% (tax rate 30% plus education cess 3% thereon)

Note: The Union government in order to streamline the current corporate tax rates has announced its plan to reduce it over the next 4 years from 30% to 25% starting from the financial year 2015-16.

- **Foreign companies**

The effective tax rate for foreign companies for FY 2015-16 is as follows:

Foreign Company	Effective Tax Rates
Having total income exceeding Rs. 100 million	43.26% [(tax rate 40% plus surcharge 5% thereon) plus education cess 3% thereon]
Having total income exceeding Rs. 10 million but not exceeding Rs. 100 million	42.02% [(tax rate 40% plus surcharge 2% thereon) plus education cess 3% thereon]
Having total income upto Rs. 10 million	41.20% (tax rate 40% plus education cess 3% thereon)

- **Partnership Firms/LLPs**

  The effective tax rate for partnership firms/LLPs for FY 2015-16 is as follows:

Partnership Firms/LLPs	Effective Tax Rates
Having total income exceeding Rs. 10 million	34.61% [(tax rate 30% plus surcharge 12% thereon) plus education cess 3% thereon]
Having total income upto Rs. 10 million	30.90% (tax rate 30% plus education cess 3% thereon)

3.1.3 Dividend Distribution Tax (DDT)

- A domestic company is liable for payment of additional income tax (known as Dividend Distribution Tax or DDT) at the rate of 15% (plus applicable surcharge and education cess) on any amount declared, distributed or paid by way of dividends to its shareholders. Such distributed dividend is exempt in the hands of recipients. However, no credit in respect of it can be claimed by the company or the shareholder (whether resident or non-resident).

- The tax base for DDT payable by the domestic holding company is to be reduced by an amount of dividend received from its subsidiary

  - **Indian subsidiary** – if such subsidiary has paid the DDT which is payable on such dividend.

  - **Foreign Subsidiary** – In case where the dividend is received from the foreign subsidiary and tax is payable @ 15% on such dividend received under section 115BBD.

- The effective DDT rate for dividend to be distributed by domestic companies for FY 2015-16 is as follows:

Dividend Distribution Tax Rate	Effective Tax Rate
Rate of DDT on the amount of dividend received by the shareholders	20.36% [(tax rate 15% plus surcharge 12% thereon) plus education cess 3% thereon considering the grossing up provisions]

3.1.4 Minimum Alternate Tax (MAT)

- In the case of companies, if tax payable on its total income as computed under the IT Act in respect of any previous years, is less than 18.5% of its "book profit", then such book profit shall be deemed to be the total income of the company and tax shall be payable at 18.5% on such total income.

- **Tax Credit for MAT paid** – The amount of tax paid under MAT is allowed to be carried forward and set off against tax payable up to the 10th year immediately succeeding the year in which the tax credit becomes allowable.

- **MAT Tax Rates**

Domestic Company	Effective MAT Rates
Having total income exceeding Rs. 100 million	21.34 %[(tax rate 18.5% plus surcharge 12% thereon) plus education cess 3% thereon]
Having total income exceeding Rs. 10 million but not exceeding Rs. 100 million	20.39 %[(tax rate 18.5 % plus surcharge 7% thereon) plus education cess 3% thereon]
Having total income upto Rs. 10 million	19.05% (tax rate 18.5% plus education cess 3% thereon)

- **Applicability of MAT provisions on Foreign Companies**

  – **MAT not Applicable from FY 2015-16 and onwards to Foreign companies (including FIIs)**

    - In order to give rest to the controversy the conflicting AAR rulings, the MAT provisions was rationalized vide the Finance Act 2015, by excluding the income of foreign companies earned in relation to capital gains arising on transactions in securities, interest, royalty or fees for technical services etc. from the chargeability of MAT.

    - As such, MAT is not applicable for the period from FY 2015-16 and onwards, subject to the specified conditions.

– **Clarification issued by CBDT on MAT not being applicable to FIIs and Foreign Companies for period upto FY 2014-15**

- The provisions of MAT being not applicable in case of FIIs and Foreign companies have been clarified by the CBDT by issue of separate recent clarifications in this regard.

- Further, it is proposed to amend the provisions of the Income Tax Act in India to incorporate the clarification with retrospective effect of MAT not being applicable to Foreign companies (including FIIs) subject to certain conditions.

3.1.5 Alternate Minimum Tax (AMT)

- Non-corporate taxpayers such as partnership firms, LLP, Sole proprietorships, AOPs, HUFs, BOIs, etc, availing profit-linked deductions or investment linked deduction (Section 35AD), are liable to pay AMT@ 18.5% (plus applicable surcharge and education cess) where regular income tax payable by them is less than the AMT.

- The effective AMT rate for FY 2015-16 is as follows:

Non-corporate assessees	Effective AMT Rates
Having total income exceeding Rs. 10 million	21.34% [(tax rate 18.50% plus surcharge 12% thereon) plus education cess 3% thereon]
Having total income upto Rs. 10 million	19.05% (tax rate 18.50% plus education cess 3% thereon)

3.1.6 Transfer Pricing Regulations

- The transfer pricing provisions in India require the international transactions between the associated enterprises to be at arms lengths price. The term 'International Transaction' includes the following:

  a) purchase, sale or lease of tangible or intangible property; or

b) provision of services; or

c) lending or borrowing money; or

d) any other transaction having a bearing on the profit, income, losses or assets of such enterprise; and

e) includes a cost sharing arrangement.

- Indian Transfer Pricing Regulations prescribes the following six methods for benchmarking the international transactions:

  - Comparable Uncontrolled Price Method;
  - Resale Price Method;
  - Cost Plus Method;
  - Profit Split Method;
  - Transactional Net Margin Method;
  - Any method which takes into account the price that would have been charged in a parallel situation in an uncontrolled environment for benchmarking.

- Initially, five methods were prescribed for computation of arm's-length price. These are broadly in line with OECD Guidelines. A sixth method, termed as the 'other method', was notified in 2012. Taxpayers are required to adopt the most appropriate method for determining the arm's-length price.

- The Indian entity is required to maintain a comprehensive set of prescribed information and documents relating to international transactions that are undertaken between associated enterprises, on an annual basis, within the prescribed timelines (due date of filing the income tax return). Further, the Indian entity is required to obtain an Accountant's Report from an independent accountant certifying the nature and amount of international transactions. The certificate needs to be filed along with the income tax return. The burden of proving the arm's-length character of the transaction is primarily on the Indian entity.

- The Indian entity may adopt an arithmetic mean of comparable prices as the arm's-length price, with a flexibility of deviation of +/- 1% for wholesalers and +/- 3% for others. Where the transfer pricing officer is of the opinion that the arm's-length price was not applied, the officer may re-compute the taxable income after giving the taxpayer an opportunity to be heard. Stringent penalties are prescribed in cases of failure to comply with the provisions of the Indian transfer pricing regulations.

- Stringent penalties, comprehensive documentation requirements has made it absolutely critical to find appropriate transfer pricing solutions and comply all the requirements to avoid any dispute/ litigation with tax authorities.

- Other developments pertaining to Transfer Pricing Regulations:

  - **Specified Domestic Transactions** – In addition to applicability of TP regulations to international transactions, the transfer pricing provisions were further extended to cover Specified Domestic Transactions ('SDT') by the Finance Act, 2012, with effect from AY 2013-14 vide section 92BA of the Act.

  - **Safe Harbour Rules** – To reduce increasing number of transfer pricing audits and prolonged disputes, the CBDT issued the Safe Harbour Rules ('SHR') on 18 September 2013. Under Safe Harbour Rules, where an eligible assessee has entered into an eligible international transaction and the option exercised by the said assessee is not held to be invalid, the transfer price declared by the assessee in respect of such transaction shall be accepted by the income-tax authorities, if it is in accordance with the specified circumstances in respect of the eligible international transactions.

  - **Advance Pricing Agreement** – To bring down Transfer Pricing disputes and provide tax certainty, the Finance Act, 2012 had introduced the provisions of Advance Pricing Agreement ('APA') w.e.f. 1st July 2012. An APA is an agreement between the CBDT and a taxpayer, which determines in advance the ALP or specifies the manner of the determination of ALP, in relation to International Transactions. Thus, once APA has been entered into with respect to an International Transactions, the ALP with respect to that International Transactions, for the period specified in the APA, shall be determined only as per the APA.

- **Mutual Agreement Procedure (MAP) Update**

  - Mutual Agreement Procedure (MAP) has emerged as a preferred alternate dispute resolution mechanism in case of cross border Transfer Pricing issues.

  - A Framework Agreement has been recently signed with United States under MAP provision of the India-US tax treaty. This is a major positive development. About 200 past transfer pricing disputes between the two countries in Information Technology (Software Development) Services [ITS] and Information Technology enabled Services (ITeS) segments are expected to be resolved under this Agreement during the current year.

3.1.7 Tax Incentives For Businesses

- Tax incentives take the form of exemptions or deductions. Tax incentives are usually classified into business tax expenditure or social tax expenditure.

- The IT Act provides for far reaching tax holidays and other tax incentives for businesses. We have briefly enumerated below, the significant tax holidays and incentives available to businesses along with the nature of deductions, eligibility criteria, quantum of deduction and period for which the deductions are available. The tax holidays and incentives are subject to fulfillment of specified conditions.

Section	Details of Exemption / Deduction	Period	Quantum of Deduction
10AA	**New eligible unit set up in SEZ on or after 1 April 2005** ■ Exemption is available to the entrepreneur as referred to in Section (2j) of SEZ Act, 2005 for profits derived from export of articles or things or services, manufactured, or produced or provided by an eligible unit. ■ The profits and gains derived from on-site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India. ■ The benefit is also available to units engaged in cutting and polishing of precious and semi-precious stones. ■ The deduction under this section is to be computed in the same proportion, which the export turnover of the eligible unit bears with the total turnover of the said unit. ■ The eligible units (which are domestic companies) availing these deductions will be subject to MAT. ■ From FY 2013-14, a person other than Company (claiming profit linked/Investment linked deduction) shall be required to pay AMT.	First 5 years Next 5 years Next 5 years	100% 50% 50%

Section	Eligibility Criteria, Quantum and Period of Deduction
32(1)(iia)	**Additional Depreciation** ■ General rate of depreciation for plant and machinery is 15% (other than certain specified types of plant and machinery).

Section	Eligibility Criteria, Quantum and Period of Deduction
	■ An assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power can claim the additional depreciation of 20% on the cost of new plant and machinery (other than ships and aircraft) which are acquired and installed after 31 March 2005. Additional depreciation shall be allowed only to the extent of 50% (i.e. 10%) if the machinery is put to use for a period less than 180 days. ■ Amendment made by the Finance Act 2015 to provide for higher additional depreciation @ 35% (instead of above 20%) in respect of the actual cost of eligible new machinery or plant acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana or West Bengal or Bihar on or after the 1 April 2015 and ending before the 1 April 2020. The eligible machinery or plant is mentioned in existing proviso to section 32(1)(iia) of the IT Act. ■ Further it is provided that, in case of eligible new plant and machinery installed and used for less than 180 days by a manufacturing unit or a unit engaged in generation and distribution of power, then, the remaining 50% (i.e. 10% or 17.5% as the case may be) of the additional depreciation is to be allowed in immediate next year.
32AC	**Investment in new plant or machinery** ■ Where a company is engaged in the business of manufacture or production of an article or thing, acquires and installs new assets exceeding Rs. 250 million, then there shall be allowed a deduction of 15% of the actual cost of such new assets over and above the normal depreciation under section 32 of IT Act. ■ The said deduction is available for investment made in new plant and machinery up to 31 March 2017. ■ In case any new asset acquired and installed by the company is sold or otherwise transferred within a period of 5 years, the amount of deduction allowed above shall be deemed to be the income of the company chargeable under the head 'Profits and Gains of business or profession' of the FY in which such new asset is sold or otherwise transferred (In addition to taxability of gains on transfer of such new asset).

Section	Eligibility Criteria, Quantum and Period of Deduction
32AD	**Investment in new assets in notified backward areas of the State of Andhra Pradesh or the State of Telangana or West Bengal or Bihar** ■ Provision of an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if: i. It sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1 April 2015 in any notified backward areas in the State of Andhra Pradesh, the State of Telangana, West Bengal or Bihar; and ii. The new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period 1 April 2015 to 31 March 2020. ■ New assets have been defined as plant or machinery subject to fulfillment of prescribed conditions. ■ The above deduction will be allowed over and above the existing deduction under section 32AC of the IT Act. ■ In case any new asset is sold or otherwise transferred within a period of 5 years, the deduction allowed above shall be deemed to be the income chargeable under the head 'Profits and Gains of business or profession' of the financial year in which such new asset is sold or otherwise transferred. (In addition to taxability of gains on transfer of such new asset) ■ This restriction shall not apply in a case of amalgamation or demerger. However, the above 5 years condition shall continue to apply to the amalgamated company or resulting company, as the case may be.
35AD	**Deduction in respect of expenditure on specified businesses** ■ Any expenditure of capital nature (other than expenditure incurred on the acquisition of any land or goodwill or financial instrument) incurred, wholly and exclusively, during the year for specified business shall be allowed as deduction subject to the specified provisions. ■ Specified business and the year (in which the operations to be commenced) for availing deduction under this section are tabulated as under:

Section	Eligibility Criteria, Quantum and Period of Deduction		
	Sr. No.	Specified Business	Specified year of Commencement
	1	Setting up and operating a cold chain facility	From 1 April 2009 onwards *
	2	Setting up and operating a warehousing facility for storing agricultural produce	From 1 April 2009 onwards *
	3	Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network	From 1 April 2007 onwards
	4	Building and operating a hotel of 2 star or above category as classified by the Central Government anywhere in India	From 1 April 2010 onwards **
	5	Building and operating a hospital with at least 100 beds for patients anywhere in India	From 1 April 2010 onwards *
	6	Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central or State Government, as the case may be, and which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed	From 1 April 2010 onwards
	7	The business of developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed	From 1 April 2011 onwards *
	8	Production of fertilizers in India through a new plant or a newly installed capacity in an existing plant	From 1 April 2011 onwards *
	9	Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962	From 1 April 2012 onwards
	10	Bee-keeping and production of honey and beeswax	From 1 April 2012 onwards

Section	Eligibility Criteria, Quantum and Period of Deduction

Sr. No.	Specified Business	Specified year of Commencement
11	Setting up and operating a warehousing facility for storage of sugar	From 1 April 2012 onwards
12	Laying and operating a slurry pipeline for transportation of iron ore	From 1 April 2014 onwards
13	Setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines	From 1 April 2014 onwards

* Specified business referred at Sr. No. 1, 2, 5, 7 and 8 in the above table commencing operations on or after 1 April 2012 shall be eligible for deduction of 150% of capital expenditure incurred.

** Where the assessee builds a hotel of 2 star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the said assessee shall be deemed to be carrying on the 'specified business' of building and operating hotel as referred at Sr. No. 4 in the above table, with retrospective effect from AY 2011-12.

- Any asset, in respect of which a deduction is claimed and allowed under this section, shall be used only for the specified business for a period of 8 years beginning with the FY in which such asset is acquired or constructed.
- Where such asset is used for any purpose other than the specified business, then, the total amount of deduction so claimed and allowed in any FY in respect of such asset (after reducing the depreciation allowable under section 32 of the IT Act on deduction allowed under section 35AD of the IT Act), shall be deemed to be income of the assessee chargeable under the head 'Profits and gains of business or profession'.
- While computing AMT, adjusted total income shall be increased by the deduction claimed under section 35AD of the IT Act as reduced by the amount of depreciation allowable under section 32 of the IT Act on such deduction under section 35AD.
- In case, any deduction has been availed under section 35AD of the IT Act on account of capital expenditure incurred for the purposes

Section	Eligibility Criteria, Quantum and Period of Deduction
	of specified business in any AY, no deduction under section 10AA of the IT Act or under the provisions of Chapter VI-A or under any other provisions of the IT Act shall be available in the same or any other AY in respect of such specified business.

Section	Details of Deduction	Quantum of deduction of sum paid / expenditure incurred
	Weighted deduction on various expenditure incurred on Scientific Research	
35(1)(i)	Any expenditure (not being in nature of capital expenditure) laid or expended on scientific research related to business carried on by the assessee.	100%
35(1)(ii)	Any sum paid to an approved research association, (which has its object of undertaking scientific research) or to a university, college or other institution to be used for scientific research.	175%
35(1)(iia)	Any sum paid to an approved company to be used by it for scientific research. Such approved company will not be entitled to claim weighted deduction under section 35(2AB) of the IT Act. However, deduction to the extent of 100% of the sum spent as revenue expenditure on scientific research, which is available under section 35(1)(i) of the IT Act will continue to be allowed.	125%
35(1)(iii)	Any sum paid to approved research association (which has its object of undertaking research) or university, college or other institution to be used for research in social science or statistical research.	125%
35(1)(iv)	Any capital expenditure (other than expenditure on land and building) incurred on scientific research related to the business carried on by the assessee.	100%
35(2AA)	Any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall	200%

Section	Details of Deduction	Quantum of deduction of sum paid / expenditure incurred
	be used for scientific research undertaken under a programme approved by the prescribed authority.	
35(2AB)	Any expenditure incurred up to 31 March 2017(other than expenditure on cost of land and building), on in-house research and development facility, as approved by the prescribed authority, incurred by the company, engaged in the business of bio-technology or manufacture or production of article or thing (except those specified in the Eleventh Schedule). Finance Act 2015 provides that, deduction under the said section shall be allowed only if the company enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfills prescribed conditions with regard to maintenance and audit of accounts and also furnishes prescribed reports.	200%

80-IA / 80- IB / 80- IC / 80- IAB / 80- ID / 80- IE / 80JJAA/ 80LA	Deductions of Profits derived by Newly Established Industrial Undertakings / Infrastructure Projects / Facilities / Developers of SEZs / Banking units, etc.			
Sr. No.	**Nature of Activity and Location**	**Type of Organization**	**Quantum of Exemption**	**Number of Years**
1	**Specified Infrastructure Projects** [Section 80-IA(4)(i)] Enterprise being company or consortium of companies registered in India or any authority or board or a corporation or any	Company / Any other body established or constituted under any Central or State Act	100%	For 10 consecutive years out of first 15 years (20 years for road, bridge, rail system,

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	other body established or constituted under any Central or State Act, for carrying on business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining of any infrastructure facility (such as road including toll road, bridge, rail system, highway project, water supply project, water treatment system, irrigation project, sanitation and sewage system or solid waste management system, airport, port, inland waterways and inland ports or navigational channel in the sea) commencing its operations on or after 1 April 1995. Widening of an existing road by constructing additional lanes as a part of highway project is also regarded as a new infrastructure facility eligible for deduction as per Circular No. 4/2010 dated 18 May 2010. Deduction shall not be available to a person executing above referred activities as a works contract.			highway project, water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system).
2	**Telecommunication Service Providers** [Section 80-IA(4)(ii)] Any undertaking which starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service or network of trunking, broadband network and internet services on or after 1 April	All	100% 30%	First 5 years Next 5 years The above 10 years shall be consecutive AYs out of first 15 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	1995 but before 31 March 2005. Deduction shall not be available to a person executing the above referred services as a works contract.			
3	**Development of Industrial Park** [Section 80-IA(4)(iii)] Any undertaking which begins to develop or develops and operates or maintains and operates an industrial park which has commenced operations during 1 April 1997 to 31 March 2011. Deduction shall not be available to person executing the above referred services as a works contract.	All	100%	10 years out of first 15 years
4(a)	**Power Undertakings** [Section 80-IA(4)(iv)] ■ Undertaking set up in any part of India for the generation or generation and distribution, of power, which has commenced operations during 1 April 1993 to 31 March 2017. ■ Undertaking which starts transmission or distribution by laying a network of new transmission or distribution lines between 1 April 1999 and 31 March 2017. ■ Undertaking which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines between	All	100%	Any 10 consecutive years out of first 15 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	1 April 2004 and 31 March 2017. Deduction shall not be available to a person executing the above referred activities as a works contract.			
4(b)	**Undertakings for revival of Power Generating Units** [Section 80-IA(4)(v)] Undertaking owned by Indian Company (formed before 30 November 2005 and notified before 31 December 2005) set up for reconstruction or revival of a power generating unit, which has commenced operations in power before 31 March 2011. Deduction shall not be available to person executing the above referred activities as a works contract.	Indian Company	100%	Any 10 consecutive years out of first 15 years
5	**Developer of SEZ** [Section 80-IAB] Any assessee being developer of a SEZ notified by the Central Government after 1 April 2005 can claim deduction under section 80-IAB.	All	100%	10 years out of first 15 years
6	**Scientific and Industrial Research Company** [Section 80-IB(8A)] Any company registered in India with its main object being scientific and industrial research and development which is for the time being approved by the DSIR	Company	100%	For first 10 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	at any time after 31 March 2000 but before 1 April 2007.			
7	**Production of mineral oil and natural gas** [Section 80-IB(9)] ■ Any undertaking which is engaged in refining of mineral oil and begins such refining on or after 1 October 1998 but not later than 31 March 2012 subject to specified conditions. ■ The tax holiday is also available in respect of profits arising from commercial production of natural gas from blocks which are licensed under the VIII Round of bidding for award of exploration contracts under the New Exploration Licensing Policy announced by the Government of India and IV Round for the Coal Bed Methane and begins commercial production of natural gas on or after 1 April 2009.	All	100%	First 7 years
8	**Undertaking engaged in processing /preservation / transportation of specified food items** [Section 80-IB(11A)] ■ An undertaking deriving profit from the integrated business of handling, storage and transportation of food grains subject to such business	Company Others	100% 30% 100% 25%	First 5 years Next 5 years First 5 years Next 5 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	beginning its operations on or after 1 April 2001. ■ The benefit is extended to undertakings engaged in the business of processing, preservation and packaging of fruits and vegetables. ■ Further, the benefit is extended to the undertakings engaged in the business of meat and meat products or poultry or marine or dairy products which begin to operate such business on or after 1 April 2009.			
9	**Operating and Maintaining Hospital** [Section 80-IB(11C)] ■ Any undertaking engaged in the business of operating and maintaining a hospital in India other than specified excluded areas. ■ The undertaking shall be eligible for the deduction if such hospital is constructed in accordance with the local regulations in force; and has at least 100 beds for patients. ■ The said tax benefit is available to a hospital which is constructed and has started or starts functioning at any time during the period beginning 1 April 2008 and ending on 31 March 2013.	All	100%	First 5 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
10	**Undertakings in special category states** [Section 80-IC] ■ Undertakings and enterprises, which begins to manufacture or produce any article or thing which is not specified in Thirteenth Schedule or undertakings and enterprises, which manufactures or produces any article or thing which is not specified in thirteenth Schedule and undertake substantial expansion of existing undertakings. ■ Undertakings and enterprises, which begin to manufacture or produce any article or thing which is specified in fourteenth Schedule or commences any operation specified in that Schedule or undertakings and enterprises, which manufactures or produces any article or thing which is specified in fourteenth Schedule or commences any operation specified in that Schedule and undertake substantial expansion. i. If located in Sikkim, from 23 December 2002 to 31 March 2007. ii. If located in North Eastern States*, from 24 December 1997 to 31 March 2007.	All	100%	First 10 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	iii. If located in Himachal Pradesh and Uttaranchal, from 7 January 2003 to 31 March 2012. * States of Assam, Tripura, Meghalaya, Mizoram, Nagaland, Manipur and Arunachal Pradesh	Company Others	100% 30% 100% 25%	First 5 years Next 5 years First 5 years Next 5 years
11	**Convention Centre and Hotels in notified areas** [Section 80-ID] ■ Any undertaking engaged in business of convention centers or hotels in specified area of the National Capital Territory subject to fulfillment of certain conditions: a. Engaged in the business of hotel located in specified area; or b. Engaged in the business of building, owning and operating a convention centre located in specified area, which has started its operations from 1 April 2007 to 31 July 2010. ■ The aforesaid deduction has been extended to any undertaking engaged in the business of hotel located in specified districts having 'World Heritage Sites' if such hotel is constructed and has started functioning during the period beginning 1 April 2008	All	100%	First 5 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	and ending on 31 March 2013. ■ The benefit is available to 2 star, 3 star or 4 star hotels.			
12	**Undertakings in North Eastern States** [Section 80-IE] ■ New undertakings and enterprises, which begin to manufacture or produce any eligible article or thing or provide any services or undertake substantial expansion or carry on any eligible business in any of the North Eastern states beginning from 1 April 2007 to 31 March 2017. ■ The eligible businesses for this purpose are hotel (not below 2 star category), adventure and leisure sports including ropeways, providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds; running an old-age home; operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training; running information technology related training centre; manufacturing of	All	100%	First 10 years

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	information technology hardware and bio-technology.			
13	**Deduction of Additional Wages** [Section 80JJAA] ■ Deduction of an amount equal to 30% of additional wages paid to the new regular workmen shall be available to all assessees having manufacturing units deriving profits from manufacture of goods in its factory. ■ Finance Act 2015 amended the definition of additional wages to mean wages paid to new regular workmen in excess of 50 workmen (instead of earlier limit of 100 workmen) employed during the financial year. ■ It is also been provided that the deduction under this section shall not be available if the factory is acquired by the assessee by way of transfer from any other person or as a result of any business re-organization.	All	30 % of additional wages paid to the new regular workmen	3 AYs including the AY relevant to the FY in which such employment is provided
14	**Offshore banking unit in SEZ and International Financial Services Centre** [Section 80LA] Income from: ■ Offshore banking unit in SEZ or ■ The business referred to in section 6(1) of the Banking	Scheduled Bank or any bank incorporated by or under the law of a country outside India or a unit of an	100%	First 5 years (beginning with the year in which prescribed permissions are obtained)

Sr. No.	Nature of Activity and Location	Type of Organization	Quantum of Exemption	Number of Years
	Regulation Act, 1949 or ■ Any unit of the International Financial Services Center from its approved business.	International Financial Services Center.	50%	Next 5 years
	Note: The aforesaid incentives available to corporates/other assessees are only for representation purposes and is further subject to the conditions as specified under the Income Tax Act and other acts as shall be applicable (such as the Special Economic Zone Act, etc).			

3.1.8 Withholding taxes on Payment to Non-resident

- A person responsible for making payment to a non-resident is required to withhold tax. Tax is required to be withheld at the rates prescribed under the IT Act or under the relevant DTAA, whichever is more beneficial for non-resident.

- The obligation to withhold tax from payments to a non-resident is applicable to all persons including a non-resident, irrespective of whether the non-resident payer has a residence, business connection or other presence in India. Withholding tax rates in respect of certain income of non-resident, inter-alia, dividend, interest, royalty or fees for technical services as per IT Act vis-a-vis India-USA Tax Treaty is tabulated as under:

Nature of Income	IT Act (Note-1)	India –US Tax Treaty
Dividend	Nil (Note-2)	– 15%, if at least 10% of the voting stock of the company paying the dividend is held by the recipient company; – 25% in other cases
Interest	20% /10% /5% (Note-3)	– 10% if loan is granted by a bank/similar institute including insurance company; – 15% in other cases
Royalties	10% (Note-4)	– 10% in case of royalties for use of, or the right to use, industrial, commercial or scientific equipment

Nature of Income	IT Act (Note-1)	India –US Tax Treaty
		– 15% in other cases
Fees for Technical services	10% (Note-4)	– 10% in case of fees for services those are ancillary and subsidiary to the payment of royalties for use of, or the right to use, industrial, commercial or scientific equipment – 15% in other cases (Note-5)

Note-1: Withholding taxes on payments to non-residents is increased by 2% surcharge (where net income exceeds INR 10 million but is less than INR 100 million) or a 5% surcharge (where net income exceeds INR 100 million) and education cess of 2% and 1%.

Note-2: As per section 115-O of the IT Act, subject to certain exceptions, any amount declared, distributed or paid by a domestic company by way of dividend shall be chargeable to DDT. In such cases, dividend distributed (which is subject to DDT) is not subject to any withholding tax

Note-3: Interest

a) 20% in case of interest received by a non-resident or a foreign company from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (Section 115A)

b) 10% in case of interest received from bonds of an Indian company issued in accordance with notified scheme or on bonds of a public sector company sold by the Government, and purchased by non-resident in foreign currency

c) 5% in following cases:

   i. Interest received from an infrastructure debt fund as referred to in section 10(47)

   ii. Interest received from an Indian company specified in section 194LC.

   iii. Interest of the nature and extent referred to in section 194LD

iv. Distributed income being interest referred to in section 194LBA (2)

Note-4: From FY 2015-16, Royalty and FTS received by a foreign company or a non-resident non-corporate assessee from government or an Indian concern shall be taxed at the rate of 10% if agreement is made at any time after 31 March 1976. If royalties and FTS are effectively connected to a PE in India, the payments are taxed on a net income basis at a rate of 40 percent (plus applicable surcharge and cess, as applicable).

Note-5: The payment would be regarded as 'fee for included services' only if the twin tests of rendering services and making technical knowledge available at the same time is satisfied. A detailed memorandum of understanding attached to the India-USA tax treaty provides guidance as to the intended scope of the concept of "included services". Requirement of 'make available' in tax treaty is met if technology, knowledge or expertise can be applied independently by person who obtained services. Fees for all other services are treated either as business profits or as independent personal services income.

Note-6: In case, the payee is not able to furnish his PAN to the payer, tax shall be deducted at the higher of the following rates (i) rate specified in the relevant provisions of the IT Act (ii) at the rate or rates in force (iii) at the rate of 20%.

Note-7: For availing the benefit of DTAA, furnishing of TRC and self-declaration in Form 10F by the payee is mandatory.

3.1.9 Foreign Tax Credit

- Under the India—USA tax treaty, both countries use ordinary credit method to relieve double taxation. In the case of the US, only Federal Income-tax is eligible for tax credit in terms of the Indo US tax treaty. State and local taxes paid in US are not covered. On the other hand, Indian taxes which are covered are the income tax including any surcharge on the income tax and the surtax.

- The US credit under the tax treaty is subject to the limitations of US law. Further, US grants credit for underlying tax to a US company in respect of dividends received from an Indian company in which the US Company owns at least 10% of the voting shares. This credit is for the tax paid by the Indian company on the earnings out of which the dividends are considered paid.

- If a resident Indian derives income, which may be taxed in US, allows a credit against Indian income tax for US income taxes paid, whether by assessment or withholding at source, up to the amount of the Indian tax on the income in respect of which US tax has been paid.

- It is pertinent to note that determination of the source of income for purposes of "Article 25 Relief from Double Taxation" shall be subject to such source rules in the domestic laws of the contracting states as apply for the purpose of limiting the foreign tax credit.

3.1.10 Taxation of Project office / Branch office / Liaison Office

- A branch or a project office, are typically considered as a PE. The LO is maintained mainly for the purpose of communication channel between the Head Office and the Indian customers and is not allowed to carry out any commercial activity in India, therefore, normally it is not regarded as PE in India.

- However, where activities carried on by the LO were not confined only to the liaison work but also were actually carrying on the commercial activities of procuring purchase orders, identifying the buyers, negotiating with the buyers, the LO was held to be the PE of the Foreign Company by the judiciary.

- Overview of taxability :

Particulars	Branch /Project Office	Liaison Office
Corporate Tax	The profit attributable to it is taxed at 40 % (to be increased by surcharge and cess) on net basis.	Generally not taxable
Minimum Alternate Tax	Foreign Company having a PE in the form of a branch or	Not Applicable

Particulars	Branch /Project Office	Liaison Office
	project office in India would subjected to MAT @18.5% (to be increased by surcharge and cess) if tax payable under the normal provisions of the IT Act is less than 18.5% of the book profits.	
Requirement to file the return of income	Required to file the ROI	Not required to the file the ROI. However, required to report the activities carried on by the LO by filing annual information in Form 49C within 60 days from the end of the financial year.
Comply with the withholding tax	Has to obtain PAN and TAN in India. It must deduct TDS on specified payments made by it to residents or non-residents and should file TDS returns.	Same as Branch /Project Office
Transfer Pricing	Transaction between the Head Office and the Branch Office /Project office should be at arm's length price applying the transfer pricing regulation in India.	Not Applicable

3.1.11 Tax implication at the time of Exit / Other remittances

- **Capital gains on Transfer of Shares**

  - Profits arising on sale of shares of a company based in India shall be liable to tax in the hands of US Company. The gain may be classified as either as Short Term Capital Gain (STCG) or Long Term Capital Gain (LTCG) depending upon period for which shares of the Indian Company is held by the US Company.
  - Identifying gains as STCG and LTCG is a very important step in computing the income under the head Capital Gains as method of

computation of gains and tax payable on the gains and treatment of losses is different for STCG and LTCG.

Aspects	Listed Equity shares	Unlisted Equity shares
Classification	STCG if sold after holding for 12 months or less and LTCG if sold after holding for more than 12 months.	STCG if sold after holding for 36 months or less and LTCG if sold for more than 36 months.
Taxability		
STCG	STCG arising on sale of equity shares on which Securities Transaction Tax (STT) has been paid attracts a tax of 15%. In other case, STCG is merged with other income and taxable at the rate applicable to that slab of income.	STCG is merged with other income and taxable at the rate applicable to that slab of income.
LTCG	LTCG arising on sale of equity shares on which Securities Transaction Tax (STT) has been paid is tax-free under section 10(38). In all other cases, LTCG is taxed in the hands of a non-resident @ 10% without indexation or 20% with indexation, whichever is more beneficial.	LTCG is taxed in the hands of a non-resident @ 10% (without indexation and exchange fluctuation)

Note: Under the provisions of the Income Tax Act, there shall also be capital gains tax implication on transfer of shares of a foreign Company, which holds shares of an Indian company and which is subject to further conditions. This concept is also referred to as 'indirect transfer' of shares of an Indian company through transfer of shares of a foreign holding company.

Note: In case, where shares are purchased in foreign currency, foreign exchange fluctuation benefit shall be available.

- **Buy-Back of shares**

  - A company may buy back its shares out of its free reserves, its securities premium account or the proceeds of any shares or other specified securities. However, the buy-back of equity shares may not exceed 25% of the company's total paid-up equity capital and free reserves, in that financial year.

- A domestic company undertaking the buy-back of unlisted shares is required to pay an additional tax on 'distributed income' at the rate of 20% (plus applicable surcharge and education cess).

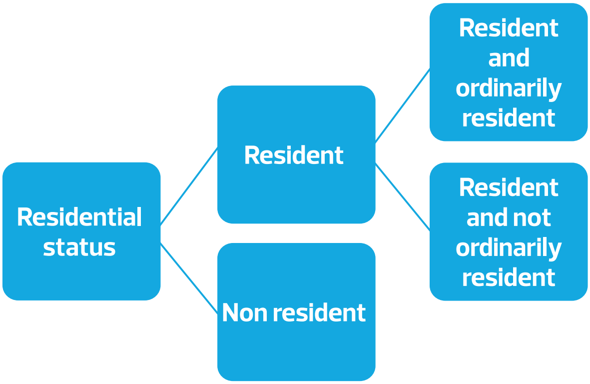
- 'Distributed income' means the difference between the consideration paid by the company on the buy-back of unlisted shares and the amount received by the company at the time of issue of such shares. This is regardless of the gain accruing to the shareholder submitting the shares in buy back and period of holding in their hands. The amount received by the shareholder on such buy-back of shares has consequently been exempted in the hands of shareholders. These provisions, which apply to all domestic companies irrespective of whether their shareholders are Indian tax residents or non-residents, are applicable to distributions made on or after June 1, 2013.

3.2 India Taxation – Employee Perspective

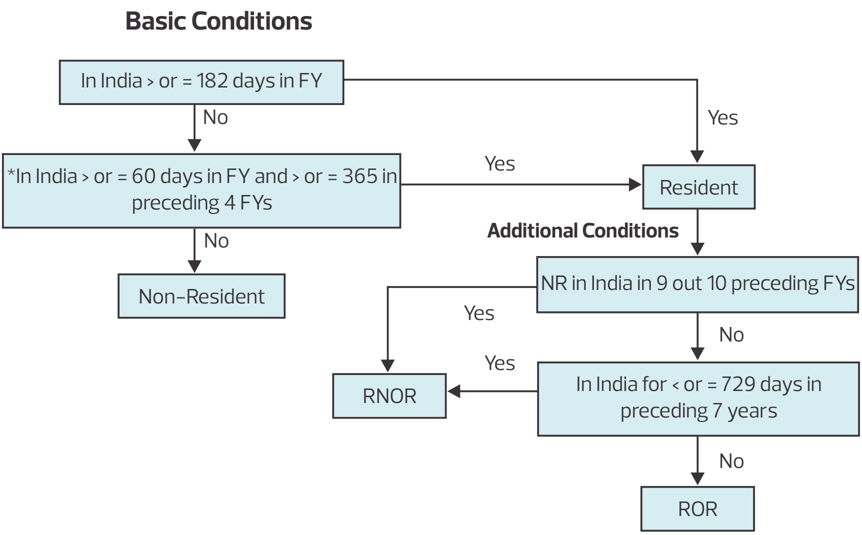
3.2.1 Residency Rules in India

- The taxability of an Individual in India is dependent on the residential status of an individual.

- The residential status is determined on the basis of physical presence of the individual in India during the relevant financial year. The Indian financial year runs from 1 April to 31 March. Thus, depending on the period of stay in India an Individual can be a Resident and Ordinarily Resident (ROR), Resident but not Ordinarily Resident (RNOR) or Non-Resident (NR) in a year.



- Determination of residential Status:



Note -1: *60 days is to be replaced by 182 days (i) where an Individual who is a citizen of India or is a person of Indian origin and who being outside India comes on a visit to India in any financial year (ii) where an individual being citizen of India leaves India for the purpose of employment outside India or as a member of the crew of an Indian ship.

Note-2: The day on which such person enters India as well as the day on which he leaves India shall be taken into account as stay of the Individual in India.

- **Scope of Taxable Income in India**

Sr. No.	Particulars	ROR	RNOR	NR
1	Income received or deemed to be received in India	Taxable	Taxable	Taxable
2	Income accruing or arising or deemed to accrue or arise in India.	Taxable	Taxable	Taxable
3	Income accruing or arising outside India from			
	■ a business controlled in or a profession set up in India	Taxable	Taxable	Not Taxable
	■ Other Income	Taxable	Not Taxable	Not Taxable

3.2.2 Taxation of Employees

There is no specific tax regime available to expatriates. They are covered by the normal Income Tax Act provisions depending on their status as residents or non-residents.

- **Taxation of employees**

Salary income shall be deemed to accrue or arise in India, if the income is earned in India. In the following cases salary income shall be regarded as earned in India only if the salary is payable for:

- service rendered in India; and
- the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment.

Note: The term 'salary' is defined to include the value of perquisites, profits in lieu of salary, amount received on voluntary retirement or termination, leave salary, gratuity and any annuity, pension or any commutation thereof.

- **Short stay exemption under the IT Act**

  The remuneration received by an employee (who is not a citizen of India) of a foreign enterprise for services rendered by him during his stay in India, shall be exempt from tax if all the conditions mentioned below are cumulatively satisfied.

  – the foreign enterprise (i.e. employer) is not engaged in any trade or business in India;

  – his stay in India during the relevant financial year is for 90 days or less. and

  – such remuneration is not liable to be deducted from the income of the employer chargeable under IT Act.

- **Treaty exemption– Article 16 Dependent Personal Services**

  As per section 90(2) of the Income Tax Act, a non-resident taxpayer can take the benefit of the provisions of the tax treaty or the domestic Income tax Act, whichever is more beneficial to him. In this regard, there is specific Article in the India-US tax treaty which deals with Dependent Personal Services.

  According to Article 16 of the India-USA tax treaty, salary income received by the expatriate shall not be taxable in India provided the following conditions are fulfilled:

  - His stay in India does not exceed 183 days in the relevant financial year,

  - Remuneration is paid by, or on behalf, of non-resident employer and

  - Remuneration is not borne by PE of non-resident employer in India.

- **Withholding tax on Salary**

Every person who is responsible for paying any income chargeable under the head "Salaries" shall withhold tax on the estimated salary income of the employee. In this respect, tax is required to be calculated on the basis of the rates given below, and shall be deducted at the time of each payment.

The effective tax rates for the FY 2015-16 in case of individual is as follows:

FY 2015-16	
Income Slabs (Rs.)	**Proposed Tax Rates**
0-2,50,000 #	Nil
2,50,001 # – 5,00,000	10.30% [tax rate 10% plus education cess 3% thereon] of income exceeding Rs. 2,50,000
5,00,001 – 10,00,000	Rs. 25,750 plus 20.60% [tax rate 20% plus education cess 3% thereon] of income exceeding Rs. 5,00,000
10,00,001 – 1,00,00,000	Rs. 1,28,750 plus 30.90% [tax rate 30% plus education cess 3% thereon] of income exceeding Rs. 10,00,000
1,00,00,001^ and above	Rs.32,58,920 plus 34.61% [(tax rate 30% plus surcharge 12% thereon) plus education cess 3% thereon] of income exceeding Rs.1,00,00,000

In case of a resident individual of the age of 60 years or more (senior citizen) at any time during the previous year, the basic exemption income slab is Rs.3,00,000. For a resident individual of the age of 80 years or more (very senior citizens) at any time during the previous year the basic exemption income slab is Rs. 5,00,000. The tax for other slabs will change accordingly. It is to be noted that non-resident employee cannot avail higher basic exemption income slab of Rs. 3,00,000/- or Rs. 5,00,000/, based on the age criteria.

- **Deductions and allowances**

There are certain specific exemptions/reliefs which have been provided in respect of certain benefits/ allowances provided to an employee by its employer, if conditions prescribed for claiming such exemptions are satisfied. Further, there are certain deductions available to an individual from the income that includes deduction for investment in specified securities, insurance premiums, donations given to eligible trusts etc.

3.2.3 Social Security Aspects

- India currently does not have a social security agreement (SSA) with USA and as such all the deductions from social security perspective (such as contribution towards Provident Fund, Employee State Insurance, etc.) as provided in the Indian legislation, shall also be applicable in case of the expatriate employee.

3.2.4 Secondment / Deputation of employees

- In the current global scenario, the international business entities have businesses worldwide with subsidiaries and entities operating in other business form in various jurisdictions. As such, with regards to the availment of expertise by its group companies / entities, generally it is observed that Subject Matter Experts (SMEs) are either deputed or seconded to support the functions of the specific group company by way of an agreement.

- Under a classic secondment agreement, the seconded employees who are under employment of non-resident parent company are deputed or transferred to subsidiary company in the overseas countries to work for special assignments which are more technical and managerial in nature. These seconded employees usually work under direct control and supervision of the subsidiary entities in their country. Since these seconded employees belong to the main parent entity, therefore, they continue to receive their remuneration and salaries with all social security and benefits from the parent entity. The salary cost and remuneration are reimbursed by the subsidiary company to the parent entity. Strictly speaking they remain the employees of the parent entities but they are under direct supervision and control of subsidiary entity, where their day-to-day activities are managed and governed by them and so much so they can be removed by them. Once the term of secondment is over, they revert back to their parent company entity.

- In a way subsidiary entity is the economic employer of the seconded employee who ultimately bears the salary cost and exercise control over their work. Generally, it is contended that reimbursement of cost cannot be treated as payment for FTS or FIS, unless there is an explicit agreement between the parties that technical services would be provided through these employees. The deputation of employees is mainly for the benefit of the subsidiary company to smoothly and efficiently conduct the business.

- However, such a reimbursement of salary cost by the subsidiary entity has been matter of litigation, as to what is the nature of such payment, whether it is 'fee for included services' or not. Other related controversy is that, on the basis of duration of the stay of seconded/deputed employees in the host countries, whether the non-resident parent entity constitutes the service PE in the host country or not.

3.2.5 Tax Return filings

- Individuals are required to furnish their return of income by July 31 following the tax year in India, unless the individual is undertaking a business where he is required to get his accounts audited and / or undertakes a transaction which is subject to transfer pricing.

- The due date of filing the return of income is November 30 following the tax year, in the case of the individual who undertakes a transaction subject to transfer pricing.

- In other cases where the individual is undertaking a business and his accounts are required to be audited, the return of income is to be filed by September 30 following the tax year.

- There is no concept of joint returns in India (unlike US), and every individual is required to file his own return of income separately.

- Electronic filing of the return of income is compulsory for individuals having taxable income above INR 500,000.
- A belated return could be filed up to two years from the end of tax year; however, a belated return would have certain limitations. As noted earlier, a taxpayer filing a late return may incur a penalty and waives his or her right to amend the return.

3.2.6 Foreign Tax Credit

The provisions of Article 25 of the India-US tax treaty which provides for relief from Double Taxation provisions is briefly discussed in para 3.1.9.

3.2.7 Independent Personal rendering Services in India – Certain Aspects

- In case of a foreign Individual or a firm providing professional services in Independent capacity shall be covered under the provisions of the Article 15 of the India-US DTAA. Under Article 15 of the DTAA between India and USA, an Individual or firm of Individuals deriving income from professional services are subject to tax in India if at least one of the following conditions are satisfied:
  - The person rendering such service has a fixed based regularly available to him in India for the purpose of performing his activities. The connotations of 'fixed base', for this purpose, are somewhat akin to a professional's chamber which, in broad terms, implies a place from where the person can conduct his independent professional activities.

    'OR'

  - The person rendering such service stays in India, in the relevant previous year, for period of 90 days or more.
- Based on above, suppose, Mr. X is a US resident who renders the services in India for a period of less than 90 days and does not have a fixed base in India. The professional fees received by him shall not be taxed in India as none of the aforesaid test is being satisfied in his case. Accordingly, there

will be no requirement to withhold tax by a payer in India provided Mr.X furnishes a valid TRC and self-declaration in Form 10F.

- Definition of professional services as given in Article 15(2) is not exhaustive but nevertheless it contemplates existence of professional skill and performance of such professional skill for which they receive payments. In case a payment falls within the scope of expression 'independent personal services', the same shall automatically be out of ambit of "Fees for included services".

3.3 Other Significant Taxation Aspects / Developments

3.3.1 Permanent Establishment Exposure & Profit Attribution

- Permanent Establishment (PE)

  - While the Income Tax Act does not specifically define the term 'permanent establishment', there exists a concept of 'business connection' which is broader than that of permanent establishment.

  - Article 5 of the India-USA DTAA contains exhaustive definition of a 'permanent establishment' for taxation of business income of a non-resident in the source country.

  - The Basic PE is a fixed place of business through which the business of an enterprise is wholly or partly carried on. However, a number of activities which may be carried on through a fixed place of business do not give rise to a PE. For instance, use of facilities solely for storage, display or occasional delivery of merchandise belonging to an enterprise will not constitute a permanent establishment of that enterprise. Further, the definition of PE includes other types of PE which has been tabulated as under:

Types of PE	Duration
Installation or structure used for the exploration or exploitation of natural resources	>120 days in any 12 months period

Types of PE	Duration
Furnishing of Services through employees in the source country	
To unrelated entity	> 90 days within any 12 months period
To related entity	1 day
Building site or construction, installation	>120 days in any 12 months period

- In addition, there could be Permanent Establishment exposure due to dependent agent, if certain conditions are fulfilled.

- In case of a wholly owned subsidiary or a joint venture company in India, the existence of such an entity may not by itself form a PE of the foreign entity. Thus, the holding structure is not relevant for determining the existence of a PE of the foreign entity in the other country.

■ **Profit Attribution**

- The profit attributable to the PE in India is subject to tax in India in accordance with the Article 7 of the India-USA DTAA. Since Article 7 incorporates a limited force of attraction principle, income earned from sale of goods or merchandise or of same or similar kind sold through the PE in the other State, which are similar or same as effected through PE, are to be added.

- In determining the business profits of a PE, deductions shall be allowed for expenses incurred for the purposes of the PE subject to the limitations of the domestic tax laws of the country in which the PE is situated. As per the Indian Domestic tax laws, the deductibility of common head-office expenses attributable to the PE is restricted to 5% of the adjusted total income.

- With regard to the transactions of the PE with its overseas head office, Transfer Pricing regulations according to the domestic law shall be applicable and if the transactions are not in accordance with the arm's length principle, adjustments need to be made to determine taxable profits in India. No business profits will be attributed to a PE merely because it purchases goods or merchandise for the enterprise of which it is a PE. It may be noted that attribution of profits to PE involves subjectivity and thus has been a matter of dispute in India.

3.3.2 Applicability of Income Computation and Disclosure Standards (also referred to as 'Tax Accounting Standard' or 'ICDS')

- With effect from FY 2015-16 onwards, 10 income computation and disclosure standards have been notified. These are to be followed by all taxpayers following the mercantile system of accounting, for the purposes of computation of business income or Income from other sources.

- The 10 Income Computation and Disclosure Standards (ICDSs) are as under:

Sl. No.	ICDS	Standards on
1	ICDS-I	Disclosure of Accounting Policies
2	ICDS-II	Valuation of Inventories
3	ICDS-III	Construction Contract
4	ICDS-IV	Revenue Recognition
5	ICDS-V	Tangible Fixed Assets
6	ICDS-VI	The Effects of Changes in Foreign Exchange Rates
7	ICDS-VII	Government Grants
8	ICDS-VIII	Securities
9	ICDS-IX	Borrowing Costs
10	ICDS-X	Provisions, Contingent Liabilities and Contingent

- **Salient features of the ICDS are as under:**

  - **Who should follow:** All assesses, following the mercantile system of accounting, for the purposes of computation of Business income or

Income from other sources.

- **Applicable from:** – This will apply for the computation of income for FY 2015-16 (i.e. AY 2016-17) and subsequent years.

- **Not required to maintain two sets of books of accounts:** It has been clarified that the notified ICDS are only for computation of taxable income and thus a taxpayer need not maintain separate set of books of account on the basis of these notified ICDS.

- **Provisions of IT Act to prevail in case of conflict: I**t has been expressly provided that in case of conflict between the provisions of IT Act and these notified ICDS, the provisions of IT Act shall prevail over the ICDS.

- **Meaning of undefined terms:** The words and expressions used and not defined in the ICDS but defined in the IT Act shall have the same meaning as given in the IT Act.

- **ICDS not applicable for computation of MAT**

- **Transition to ICDS:** Each ICDS contains certain transitional provisions.

3.3.3 General Anti-Avoidance Rules ('GAAR')

- The GAAR was introduced in the IT Act through the Finance Act 2012. Before the introduction of the GAAR, in the Indian context, judicial decisions had varied on the question of substance over form and tax avoidance versus tax planning.

- As per the Finance Act, 2012, the GAAR would apply if an arrangement is declared an 'impermissible avoidance arrangement'. The main purpose or one of the main purposes of such an arrangement should be to obtain a tax benefit and it should satisfy any one of the specified conditions, such lack of commercial substance or that it results into misuse or abuse of provisions of tax laws.

- The implementation of the provisions of the GAAR, which is an anti-abuse provision, has been deferred for 2 years and as per the current regulations is applicable from FY 2017-18.

3.3.4 Application before Authority for Advance Rulings

- Non-resident taxpayers can file applications with the Authority for Advance Rulings ('the AAR') to obtain advance rulings on income tax issues arising out of a transaction/proposed transaction. However, an advance ruling cannot be sought where the question is already pending in the case of the Non-resident applicant before any income-tax authority, the Appellate Tribunal or any court; or involves determination of fair market value of any property; or relates to a transaction which is designed prima facie for avoidance of income-tax.

- AAR is mandated to pronounce its ruling within 6 months of receiving the application. An AAR ruling is binding on the taxpayer and the revenue authorities.

- Advance rulings are not binding upon any court for other matters and other enterprises. Advance rulings do have a persuasive value in other cases with relatable facts.

- Where the applicant does not agree with an advance ruling, the same can be appealed against before a high court and/or the apex court by way of special leave to appeal by the Supreme Court. In order to clear the backlogs of AAR Rulings, it has been decided to strengthen the AAR by constituting additional benches (however, the final notification is awaited).

3.4 Indirect Tax Regulations – Overview

3.4.1 Service tax

- Service tax is levied at 14% (including cess) on the value of all services except the following:

  - Services forming a part of the negative list

- Exempt services

- Service providers having a total value of taxable services upto INR 1 million are not required to charge service tax provided they fulfill certain conditions. Credit is available on the service tax paid on input services.

- Export of services outside India is not liable to service tax. In order to qualify as export of service, it is necessary that the payment for such service shall be received by the service provider in convertible foreign exchange. A refund or credit for duty on input services is available to exporters.

- Further, services wholly used in an special economic zone (SEZ) are exempt. However, where services are not wholly consumed in an SEZ, refund of input service tax is available to an SEZ unit or developer in the prescribed manner.

- Generally, service tax is payable by the services provider. However, for certain services (e.g. import of services), the onus of paying the service tax lies, either fully or partially, with the service recipient.

- For corporates, service tax payments are to be required on a monthly basis and service tax returns are to be filed twice a year.

3.4.2 Value-Added Tax (VAT)

- The Indian Constitution grants powers to state legislatures to levy tax on goods sold within that state. Such sales are chargeable to VAT at the rates specified under the VAT laws of the relevant state.

- Under the VAT regime, the VAT paid on goods purchased within the state is eligible for VAT credit. The input VAT credit can be utilised against the VAT/CST payable on the sale of goods. It is, thus, ensured that the cascading effect of taxes is avoided and only the value addition is taxed.

- Currently, there is no VAT on imports into India. Exports are not charged to VAT. VAT paid on inputs used in respect of export goods can be claimed as a refund by the exporter.

- The state VAT is charged at different rates depending on the nature of the goods involved.

- Registration is compulsory for businesses exceeding a certain annual turnover (INR 5,00,000 in most states), although certain state laws also specify monetary limits of sales/purchases. A turnover threshold is prescribed so as to exclude small traders from the ambit of VAT.

- A tax under composition scheme, at a lower rate, may be levied on small traders within a specified turnover limit in lieu of VAT.

- VAT returns and payments generally are due monthly or quarterly based on the amount of tax liability. VAT is payable by the seller, which the seller collects from the buyer by invoicing it to the customer.

3.4.3 Goods and services tax (GST)

- The Indian Government has proposed to introduce a comprehensive Goods and Service Tax instead of the existing multiple taxes.

- The GST would consist of two components: one levied by the centre (Central GST or CGST) and the other levied by the states (State GST or SGST). The CGST and the SGST would be applicable on all transactions of goods and services made for a consideration except the following:

  – Exempted goods and services

  – Transactions that are below the prescribed threshold limits

- Details of taxes that would be subsumed into the dual GST are as follows:

Central Taxes	State Taxes
Excise duty	VAT
Additional Customs Duty (CVD)	Entertainment tax
Service tax	Luxury tax
ADC	Lottery taxes
	State cesses and surcharges
	Entry tax not in lieu of octroi

- The GST is proposed to be implemented with effect from 1 April 2016.

3.4.4 Customs Duty

- Customs duty is levied on goods imported into, and exported from, India. With regard to exports from India, customs duty is levied only on a very limited list of goods. The rate of customs duty applicable to a product imported or exported depends upon its classification under the Customs Tariff Act, 1975. Customs duty is levied on the transaction value of the imported or exported goods.

- The customs duty applicable to any product is composed of a number of components, which are as follows:

  – **Basic Customs Duty (BCD)**

    This is the basic component of customs duty. It is applied to the landed value of the goods (i.e. the cost, insurance, and freight [CIF] value of the goods plus landing charges). The rates vary for different items, but the general rate is 10%.

  – **Additional customs duty**

    This is commonly known as Countervailing Duty [CVD]. This is equivalent to, and is charged in lieu of, the excise duty applicable on similar goods manufactured or produced in India. CVD is typically calculated on the sum of the landed value of the goods and the applicable BCD. However, the CVD on specific consumer goods intended for retail sale in India is calculated on the basis of the maximum retail sale price (MRP) printed on their packs less the specified abatement. The present rate of excise duty is 12.5%, and, consequently, the rate of CVD is also 12.5%.

3.4.5 Excise duty

- Excise duty levied by the Central Government on the manufacture or production of movable and marketable goods in India.

- The rate at which excise duty is levied on the goods depends on the classification of the goods under the Central Excise Tariff Act, 1985. The excise tariff is primarily based on the eight digit HSN classification adopted so as to achieve conformity with the customs tariff.

- The excise duty on most consumer goods that are intended for retail sale is chargeable on the basis of the MRP printed on the package of the goods. However, abatements are admissible at rates ranging from 15% to 55% of the MRP. Goods, other than those covered by MRP based assessments, are generally chargeable to duty on the 'transaction value' of the goods sold to an independent buyer. In addition, the Central Government has the power to fix tariff values for imposing ad valorem duties on the goods.

- Presently, the excise duty rate is 12.5% with a few exceptions of lower or higher rates. However, there is also a partial or complete exemption for specified goods from payment of excise duties available.

3.5 Foreign Trade Policy 2015-2020

The new Foreign Trade Policy (FTP) for the period 2015-2020 is effective from 1 April 2015. Some of the key features of the same have been summarized as under:

- **Merchandise Export from India Scheme (MEIS)**

  - Existing multiple schemes such as Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri Infrastructure Incentive Scrip and Vishesh Krishi Gram Udyog Yojana have been merged into a single scheme, "Merchandise Export from India Scheme" (MEIS).

  - Rewards for export of notified goods such as dairy products, vegetables, confectionary, pharmaceutical products, capital goods, etc. to notified markets under 'Merchandise Exports' from India Scheme (MEIS) to be payable as percentage of realized Free on Board (FOB) value (in free foreign exchange).

- Debits towards basic customs duty in the transferable reward duty credit scrips allowed adjustment as duty drawback.

- **Service Exports from India Scheme (SEIS)**

  - Served From India Scheme (SFIS) has been replaced with Service Exports from India Scheme (SEIS).This scheme is applicable to 'Service Providers located in India'.

  - Service provider with minimum net foreign exchange earnings of USD 15,000 in the preceding financial year is eligible for benefit under the scheme.

  - Service providers will be issued SEIS scrip of 5% or 3% (depending on the category of service) of net foreign exchange earned.

  - Reward issued as duty credit scrip are freely transferable and usable for all types of goods and Service Tax debits on procurement of services / goods.

  - Incentives (MEIS & SEIS) would be available for units located in Special Economic Zones (SEZ).

  - All scrips issued under MEIS and SEIS and the goods imported against these scrips be fully transferable and usable for payment of custom duty, excise duty and service tax.

- **Export Promotion Capital Goods Scheme (EPCG)**

  - In case of import of capital goods under EPCG scheme, export obligation is 6 times of the duty saved amount on capital goods. In case capital goods are procured from indigenous manufacturers, export obligation will be reduced i.e. 25% lower than normal export obligation.

  - Exporter registered with the excise authorities has the option to furnish an installation certificate confirming receipt of capital goods from a Chartered Engineer subject to conditions.

- Import under EPCG Authorisation Scheme not be eligible for exemption from payment of anti-dumping duty, safeguard duty and transitional product specific safeguard duty.

- Installation certificate is normally required to be submitted within 6 months of the completion of the imports. Licencing authority can extend the period of furnishing the installation certificate by another 12 months.

- Specified guidelines for maintenance of average export obligation and specified export obligation notified in case of exit of an EOU or SEZ unit.

■ **Miscellaneous – Export Oriented Units (EOU), Electronic Hardware Technology Parks (EHTP), Software Technology Parks (STP) and Bio Technology Parks (BTP)**

- EOUs, EHTPs and STPs allowed to share infrastructural facilities among themselves.

- Inter unit transfer of goods and services allowed among EOUs, EHTPs, STPs, and BTP.

- EOUs allowed facility to set up warehouses near the port of export.

- STP units, EHTP units, software EOUs allowed facility to use all duty free equipment/goods for training purposes.

- 100% EOU units allowed facility of supply of spares/ components up to 2% of the value of the manufactured articles to a buyer in domestic market for the purpose of after sale services.

- In case of EOU period of 5 years for achieving Positive Net Foreign Exchange Earning (NFE) can be extended by one year on ground of adverse market condition or genuine hardship.

- EOUs/EHTP/STP units permitted to transfer capital goods to other EOUs, EHTPs, STPs, SEZ units. If such transferred capital goods are rejected by the recipient, then the same can be returned to the supplying unit, without payment of duty.
- EOUs having physical export turnover of Rs.100 millions and above are allowed facility of fast track clearances of import and domestic procurement.

4.0

INVESTING IN US – TAXATION AND REGULATORY ASPECTS – INDIAN PERSPECTIVE

Chapter 4

Investing in US – Taxation and Regulatory Aspects – Indian Perspective

FOREIGN EXCHANGE CONTROL REGULATIONS FOR OUTBOUND INVESTMENTS

4.1 Indian Investment in US – Overview

4.1.1 Overseas investments (or financial commitment) in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global business by Indian entrepreneurs. Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries. Transfer of technology and skill, sharing of results of R&D, access to wider global market, promotion of brand image, generation of employment and utilisation of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments (or financial commitment). They are also important drivers of foreign trade through increased exports of plant and machinery and goods and services from India and also a source of foreign exchange earnings by way of dividend earnings, royalty, technical know-how fee and other entitlements on such investments (or financial commitment). Since globalization of trade is a two-way process, integration of the Indian economy with the rest of the world with all its attendant benefits is achieved through overseas investment.

4.1.2 In keeping with the spirit of liberalisation, which has become the hallmark of economic policy in general, and Foreign Exchange regulations in particular, the Reserve Bank has been progressively relaxing the rules and simplifying the procedures both for current account as well as capital account transactions.

4.1.3 Outbound investments from India have undergone a considerable change not only in terms of magnitude but also in terms of geographical spread and sectorial composition. Analysis of the trends in direct investments over the last decade reveals that while investment flows, both inward and outward, were rather muted during the early part of the decade, they gained momentum during the latter half. While FDI inflows between FY 2002 to FY 2014 witnessed a CAGR of 21%, FDI outflows registered a higher growth rate of CAGR 35.1% during the same period. (Source: IBEF)

4.2 About Direct Investment – Permissible Structures

4.2.1 Direct investment outside India means investments, either under the Automatic Route or the Approval Route, by way of contribution to the capital or subscription to the Memorandum of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS).

4.2.2 An eligible Indian party is free to acquire either a partial stake (JV) or the entire stake (WOS) in an already existing entity overseas subject to the valuation guidelines.

4.2.3 Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 vide Notification No. FEMA.120/RB-2004 dated July 7, 2004 seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment (or financial commitment) by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India.

4.2.4 Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route and (ii) Approval Route.

4.2.5 Setting up of an SPV under the Automatic Route is permitted for the purpose of making investment (or financial commitment) in JV/WOS overseas.

4.2.6 Investments (or financial commitment) in JV/WOS abroad by Indian parties through the medium of a Special Purpose Vehicle (SPV) are also permitted under the Automatic Route in terms of Regulation 6 of the Notification referred to in para 4.2.3, subject to the conditions that the Indian party is not included in the Reserve Bank's caution list or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the Reserve Bank/any other Credit Information company as approved by the Reserve Bank. Indian parties whose names appear in the Defaulters' list require prior approval of the Reserve Bank for the investment (or financial commitment).

4.3 Eligible Indian Party

4.3.1 An Indian Party is eligible to make overseas direct investment under the Automatic Route. An Indian Party can be the following entities:

- A company incorporated in India or a body created under an Act of Parliament or
- A partnership firm registered under the Indian Partnership Act 1932 or
- A Limited Liability Partnership (LLP) incorporated under the LLP Act, 2008 and
- Specific entities under Approval Route
  - Unregistered Partnership Firm
  - Proprietary Firm
  - Trust / Society
  - Un-incorporated entities

4.4 Permissible Activities

4.4.1 An Indian Party can make overseas direct investment in any bonafide activity except real estate business and banking business which are prohibited sectors for overseas direct investment.

4.4.2 Indian banks operating in India can set up JVs/WOSs abroad provided they obtain clearance under the Banking Regulation Act, 1949, from the Department of Banking Operations and Development (DBOD), CO, RBI.

4.4.3 An Indian company engaged in financial services sector activities can make investment in a JV/WOS abroad in the financial services sector, provided it fulfills the following additional conditions:

i. has earned net profit during the preceding three financial years from the financial services activities;

ii. is registered with the appropriate regulatory authority in India for conducting financial services activities;

iii. has obtained approval for undertaking such activities from the regulatory authorities concerned both in India and abroad before venturing into such financial activity;

iv. has fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India; and

Notes:

(i) Any additional investment by an existing JV / WOS or its step down subsidiary in the financial services sector is also required to comply with the above conditions.

(ii) Trading in Commodities Exchanges overseas and setting up of JV / WOS for trading in Overseas Commodities Exchanges will be reckoned as financial services activity and will require clearance from the Forward Markets Commission (FMC). The FMC has put in place guidelines for allowing FMC registered members of Commodity Exchanges to undertake commodity related activities abroad. Indian entities desirous of setting up of JV / WOS overseas for trading in overseas commodities exchanges may, therefore, approach the FMC for regulatory clearance.

4.5 Restricted Countries

4.5.1 Investment in Pakistan is allowed under the approval route. Investments in Nepal can be only in Indian Rupees. Investments in Bhutan are allowed in Indian Rupees and in freely convertible currencies. Further, there are no restrictions in terms for any country other than mentioned above.

4.6 Limits and requirements for overseas direct investment to be made under the Automatic Route

4.6.1 The limit of Overseas Direct Investments (ODI)/ Financial Commitment (FC) to be undertaken by an Indian Party under the automatic route has been allowed upto within 400% of the net worth as per the last audited balance sheet.

4.6.2 Any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).

4.6.3 Financial commitment means the amount of direct investments outside India by an Indian Party –

i. by way of contribution to equity shares or CCPS of the JV / WOS abroad

ii. contribution to the JV / WOS as preference shares (for reporting purpose to be treated as loan)

iii. as loans to its the JV / WOS abroad

iv. 100% of the amount of corporate guarantee issued on behalf of its overseas JV/WOS and

v. 50% of the amount of performance guarantee issued on behalf of its overseas JV/WOS.

vi. bank guarantee/standby letter of credit issued by a resident bank on behalf of an overseas JV / WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party

vii. Creation of charge (pledge / mortgage / hypothecation) on the movable / immovable property or other financial assets of the Indian party / its group companies

4.7 Funding Cap

The criteria for overseas direct investment under the Automatic Route are as under:

4.7.1 The Indian Party can invest up to the 400% of its net worth (as per the last audited Balance Sheet) in JV / WOS for any bonafide activity permitted as per the law of the host country. The prescribed limit vis-a-vis the net worth will not be applicable where the investment is made out of balances held in the EEFC account of the Indian party or out of funds raised through ADRs/GDRs;

4.7.2 The Indian Party is not on the Reserve Bank's exporters' caution list / list of defaulters to the banking system published/ circulated by the Credit Information Bureau of India Ltd. (CIBIL) /RBI or any other credit information company as approved by the Reserve Bank or under investigation by the Directorate of Enforcement or any investigative agency or regulatory authority; and

4.7.3 The Indian Party routes all the transactions relating to the investment in a JV/WOS through only one branch of an authorised dealer to be designated by the Indian Party.

4.8 Procedure to make overseas direct investment

4.8.1 The Indian Party intending to make overseas direct investment under the automatic route is required to fill up Form ODI duly supported by the documents listed therein, i.e., certified copy of the Board Resolution, Statutory Auditors certificate and Valuation report (in case of acquisition of an existing company) as per the prescribed valuation norms and approach an Authorized Dealer (designated Authorized Dealer) for making the investment/remittance.

4.9 Valuation norms

4.9.1 In case of partial / full acquisition of an existing foreign company where the investment is more than USD five million, share valuation of the company has to be done by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker/ Merchant Banker outside India registered with the appropriate regulatory authority in the host country and in all other cases by a Chartered Accountant/ Certified Public Accountant.

4.9.2 However, in the case of investment by acquisition of shares where the consideration is to be paid fully or partly by issue of the Indian Party's shares (swap of shares), irrespective of the amount, the valuation will have to be done by a Category I Merchant Banker registered with SEBI or an Investment Banker/ Merchant Banker outside India registered with the appropriate regulatory authority in the host country.

4.9.3 In case of additional overseas direct investments by the Indian party in its JV / WOS, whether at premium or discount or face value, the concept of valuation, as indicated above, shall be applicable.

4.10 Approval route and related procedure

4.10.1 Proposals not covered by the conditions under the automatic route require prior approval of the Reserve Bank for which a specific application in Form ODI with the documents prescribed therein is required to be made through the Authorized Dealer Category – I banks. Some of the proposals which require prior approval are:

i. Overseas Investments in the energy and natural resources sector exceeding the prescribed limit of the net worth of the Indian companies as on the date of the last audited balance sheet;

ii. Investments in Overseas Unincorporated entities in the oil sector by resident corporates exceeding the prescribed limit of their net worth as on the date of the last audited balance sheet, provided the proposal has been approved by the competent authority and is duly supported by a certified copy of the Board Resolution approving such investment. However, Navaratna Public Sector Undertakings, ONGC Videsh Ltd and Oil India Ltd are allowed to invest in overseas unincorporated / incorporated entities in oil sector (i.e. for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits, under the automatic route;

iii. Overseas Investments by proprietorship concerns and unregistered partnership firms satisfying certain eligibility criteria;

iv. Investments by Registered Trusts / Societies (satisfying certain eligibility criteria) engaged in the manufacturing / educational / hospital sector in the same sector in a JV / WOS outside India;

4.10.2 Applications in Form ODI- Part I may be forwarded through the designated Authorized Dealer Category – I bank to RBI.

4.10.3 Requests under the approval route are considered by taking into account, inter alia, the prima facie viability of the JV / WOS outside India, likely contribution to external trade and other benefits that may accrue to India through such investment, financial position and business track record of the Indian party and the foreign JV / WOS, experience and expertise of the Indian party in the same or related line of activity of the JV / WOS outside India, etc.

4.11 Financing Alternatives

4.11.1 Funding for overseas direct investment can be made by one or more of the following sources:

1. Drawal of foreign exchange from an AD bank in India.
2. Swap of shares (refers to the acquisition of the shares of an overseas JV / WOS by way of exchange of the shares of the Indian party).
3. Capitalization of exports and other dues and entitlements.
4. Proceeds of External Commercial Borrowings / Foreign Currency Convertible Bonds.
5. In exchange of ADRs / GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and the guidelines issued by Government of India in the matter.
6. Balances held in Exchange Earners Foreign Currency account of the Indian Party maintained with an Authorized Dealer.
7. Proceeds of foreign currency funds raised through ADR / GDR issues.

4.12 Conversion of outstanding dues into Equity

4.12.1 An Indian Party is permitted to capitalise the payments due from the foreign JV / WOS towards exports, fees, royalties or any other dues from the foreign JV / WOS for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable.

4.12.2 Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realisation will require the prior approval of the Reserve Bank.

4.12.3 Indian software exporters are permitted to receive 25% of the value of their exports to an overseas software start-up company in the form of shares without entering into Joint venture Agreements, with the prior approval of the Reserve Bank.

4.13 Share Swap

4.13.1 Direct investment outside India in a JV/WOS by way of share swap arrangement can be made under the automatic route provided the valuation norms prescribed i.e. valuation of the shares is done by a Category I Merchant Banker registered with the SEBI or an Investment Banker outside India registered with the appropriate Regulatory Authority in the host country are satisfied, and the shares are duly issued / transferred in the name of the Indian investing company.

4.13.2 Investors may also please note that all share swap transactions require the prior approval of the Foreign Investment Promotion Board (FIPB) for the inward leg of the investment.

4.14 Regulatory Compliances by the Indian Party

4.14.1 An Indian Party will have to comply with the following:

i. receive share certificates or any other documentary evidence of investment in the foreign JV / WOS as an evidence of investment and submit the same to the designated AD within 6 months;

ii. repatriate to India, all dues receivable from the foreign JV / WOS, like dividend, royalty, technical fees etc.; within 60 days of its falling due.

iii. submit to the Reserve Bank through the designated Authorized Dealer, every year, an Annual Performance Report in Part III of Form ODI in respect of each JV or WOS outside India set up or acquired by the Indian party;

iv. report the details of the decisions taken by a JV/WOS regarding diversification of its activities /setting up of step down subsidiaries/alteration in its share holding pattern within 30 days of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of the local laws of the host country. These are also to be included in the relevant Annual Performance Report; and

v. in case of disinvestment, sale proceeds of shares/securities shall be repatriated to India immediately on receipt thereof and in any case not later than 90 days from the date of sale of the shares /securities and documentary evidence to this effect shall be submitted to the Reserve Bank through the designated Authorised Dealer.

4.15 Profit Repatriation and Exit Options

4.15.1 Profits from JV /WOS can be repatriated in the form of Dividends to Indian Party through normal banking channels. Loans, if any, can be repaid by the JV/WOS as per the terms of the agreement.

4.15.2 The details of repatriation need to be disclosed in the Annual Performance Report. Foreign Dividends are taxed at beneficial rate of 15% plus applicable surcharge and cess (subject to MAT on book profits) and withholding taxes, if any on such dividends will be eligible for tax credit in India.

4.16 Different modes of disinvestments from the JV / WOS abroad

4.16.1 Disinvestment by the Indian party from its JV / WOS abroad may be by way of transfer / sale of equity shares to a non-resident / resident or by way of liquidation / merger / amalgamation of the JV / WOS abroad.

- Disinvestment without write off under the automatic route subject to the following:

The Indian Party may disinvest without write off under the automatic route subject to the following:

i. the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;

ii. if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;

iii. the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;

iv. the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;

v. the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India; and

vi. Other terms and conditions as prescribed.

- **Disinvestment involving write-off**

An Indian Party may disinvest, under the automatic route, involving write off in the under noted cases:

i. where the JV / WOS is listed in the overseas stock exchange;

ii. where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crores (INR 1000 million);

iii. where the Indian Party is an unlisted company and the investment in the overseas JV / WOS does not exceed USD 10 million; and

iv. where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.

Report on Closure/Disinvestment/Voluntary Liquidation/Winding up of JV / WOS in part IV has to be made by the Indian Party to its AD Bank.

- **Write-off of Capital**

– Indian company which has set up WOS abroad or has at least 51% stake in an overseas JV may write off capital (equity / preference shares) or other receivables (such as loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS) even while such JV / WOS continue to function subject to the following:

  i. Listed Indian companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS under the Automatic Route; and

  ii. Unlisted companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS with prior approval of the Reserve Bank.

– The write-off / restructuring have to be reported to the Reserve Bank through the designated AD bank within 30 days of write-off / restructuring. The write-off / restructuring is subject to the condition that the Indian Party should submit the following documents for scrutiny along with the applications to the designated AD Category – I bank under the Automatic as well as the Approval Routes:

  a) A certified copy of the balance sheet showing the loss in the overseas WOS/JV set up by the Indian Party; and

b) Projections for the next five years indicating benefit accruing to the Indian company consequent to such write off / restructuring.

4.17 Other Investments

4.17.1 Listed Indian companies can invest up to 50 % of their net worth as on the date of the last audited Balance Sheet in overseas companies, listed on a recognized stock exchange, or in the rated debt securities issued by such companies.

4.18 Acquisition of Shares of overseas companies by individual residents

4.18.1 General permission has been granted to persons (individual) resident in India for purchase / acquisition of securities as under:

a. Out of funds held in the RFC account;

b. As bonus shares on existing holding of foreign currency shares;

c. When not permanently resident in India, from the foreign currency resources outside India.

4.18.2 General permission is also available to sell the shares so purchased or acquired.

4.18.3 **A resident Indian can remit, up to the limit prescribed by the Reserve Bank from time to time, per financial year under the Liberalised Remittance Scheme (LRS), for permitted current and capital account transactions including purchase of securities and also setting up/acquisition of JV/WOS overseas with effect from August 5, 2013 (vide Notification No. 263).**

4.18.4 Resident individuals can also acquire/sell foreign securities without prior approval in the following cases:

i. as a gift from a person resident outside India;

ii. by way of ESOPs issued by a company incorporated outside India under Cashless Employees Stock Option Scheme which does not involve any remittance from India;

iii. by way of ESOPs issued to an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company irrespective of the percentage of the direct or indirect equity stake in the Indian company;

iv. as inheritance from a person whether resident in or outside India;

v. by purchase of foreign securities out of funds held in the Resident Foreign Currency Account maintained in accordance with the Foreign Exchange Management (Foreign Currency Account) Regulations, 2000; and

vi. by way of bonus/rights shares on the foreign securities already held by them.

4.19 Setting up of Branch Office / Representative office abroad and acquisition of Immovable Property for Overseas Offices

4.19.1 At the time of setting up of the office, AD Category – I banks may allow remittances towards initial expenses up to 15% of the average annual sales/income or turnover during the last two financial years or up to twenty-five per cent of the net worth, whichever is higher.

4.19.2 For recurring expenses, remittances up to 10% of the average annual sales/income or turnover during the last two financial years may be sent for the purpose of normal business operations of the office (trading/non-trading)/branch or representative office outside India subject to the following terms and conditions:

- The overseas branch/office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity;
- The overseas branch/office/representative shall not enter into any contract or agreement in contravention of the Act, Rules or Regulations made there under;
- The overseas office (trading / non-trading) / branch / representative should not create any financial liabilities, contingent or otherwise, for the head office in India and also not invest surplus funds abroad without prior

approval of the Reserve Bank. Any funds rendered surplus should be repatriated to India.

- The details of bank accounts opened in the overseas country should be promptly reported to the AD Bank.

- AD Category – I banks may also allow remittances by a company incorporated in India having overseas offices, within the above limits for initial and recurring expenses, to acquire immovable property outside India for its business and for residential purpose of its staff.

- The overseas office / branch of software exporter company/firm may repatriate to India 100% of the contract value of each 'off-site' contract.

- In case of companies taking up 'on site' contracts, they should repatriate the profits of such 'on site' contracts after the completion of the said contracts.

- An audited yearly statement showing receipts under 'off-site' and 'on-site' contracts undertaken by the overseas office, expenses and repatriation thereon may be sent to the AD Category – I banks.

TAXATION FOR OUTBOUND INVESTMENTS – CORPORATE PERSPECTIVE

4.20 Direct Taxation Aspect in India and POEM Implications

4.20.1 An Indian company may propose to invest in the US by setting up a wholly owned subsidiary, forming a joint venture or establishing a branch office in the US.

4.20.2 As per the Indian laws, a company is regarded as resident in India for the tax year if:

- It is incorporated in India (i.e. it is an Indian company) OR

- Its place of effective management (referred to as POEM) is in India during that year

4.20.3 The 'place of effective management' means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

4.20.4 As per the OECD commentary, all relevant facts and circumstances must be examined to determine the place of effective management. It further states that an entity may have more than one place of management, but it can have only one place of effective management at any one time.

4.20.5 As per OECD Model Commentary 2014 on Article 4 (Resident), competent authorities required to apply such a provision to determine the residence of a legal person for purposes of the Convention would be expected to take into account various factors. The specified various factors in the model commentary provide guidance for determination of the Place of Effective Management including the following:

- where the meetings of its board of directors or equivalent body are usually held
- where the chief executive officer and other senior executives usually carry on their activities
- where the senior day-to-day management of the person is carried on
- where the person's headquarters are located
- which country's laws govern the legal status of the person
- where its accounting records are kept
- whether determining that the legal person is a resident of one of the Contracting States but not of the other for the purpose of the Convention would carry the risk of an improper use of the provisions of the Convention etc.

4.20.6 In case the POEM of the US subsidiary is demonstrated to be in India, the tax and compliance implications shall be similar to those of a company which is a resident of India. The US subsidiary shall be required to file its return of income in India and its global income shall be taxable in India. Further, the TDS or withholding tax requirements on various payments being made shall become applicable.

4.20.7 It is advisable to ensure that steps are taken to mitigate the POEM exposure.

i. **Tax Treaty provisions**

- The US Company may become a resident of two countries namely US and India by virtue of incorporation and POEM respectively. Relief

  can be claimed from double taxation on account of dual residency based on the treaty between US and India.

- The DTAA between India and US provides that if a company is resident in both (the US and India) that company shall be considered to be outside the scope of the DTAA for most purposes.

ii. **Tax rates in India**

- If the US entity becomes resident in India on account of POEM, the corporate tax rate of 30% (increased by surcharge and cess) shall be applicable.

- In any other case, it will be treated as a foreign company and only income earned and received in India will be taxable in India.

- The effective tax rates for foreign companies for FY 2015-16 (1 April 2015 to 31 March 2016) are as follows:

Foreign Company	Effective Tax Rates (FY 2015-16)
Having total income exceeding Rs. 100 million	43.26% [(tax rate 40% plus surcharge 5% thereon) plus education cess 3% thereon]
Having total income exceeding Rs. 10 million but not exceeding Rs. 100 million	42.02% [(tax rate 40% plus surcharge 2% thereon) plus education cess 3% thereon]
Having total income upto Rs. 10 million	41.20% (tax rate 40% plus education cess 3% thereon)

4.21 Taxation of incomes received

4.21.1 The Indian entity may derive the following incomes from the US subsidiary as listed below:

1. Dividends distributed by the foreign subsidiary

2. Interest income on loan given to the foreign subsidiary

3. Royalty income on providing technical know-how to the foreign company

4. Fees for technical services

4.21.2 The above income would be taxable in the hands of the Indian entity subject to credit of taxes withheld in the US.

4.21.3 Alternatively, a branch may be setup in the US. In this case, the income earned by the branch shall be includible in the Indian company's income. Further, the Indian entity shall be eligible to get the credit of taxes paid in US

4.22 US Taxes and Credits

4.22.1 Taxation in US

- In the United States, resident corporations are taxed based on worldwide income. Generally, a foreign corporation engaged in a US trade or business is taxed at regular US corporate tax rates on income from US sources that is effectively connected with that business and at 30% on US-source income not effectively connected with that business.

- The US corporate income tax (CIT) rate is based on a progressive rate schedule; however, an alternative minimum tax (AMT) provides for a flat rate with fewer deductions.

- Domestic withholding tax rate is 30% on Dividends, Interest and Royalties in USA.

4.22.2 The tax rates in respect of dividend, interest, royalty and fees for technical services based on the DTAA entered between India and US has been tabulated below:

Nature of Income	Rates as per DTAA
Dividend	15%/25% [Note 1]

Nature of Income	Rates as per DTAA
Interest	10%/15% [Note 2]
Royalty	Note 3
Fees for technical services	Note 3
Capital Gains	Taxable as per domestic laws

Notes:

1. 15% tax on dividends if at least 10% of the voting stock is owned by company; in any other case, 25%.

2. Interest taxable at 10% if payer is a bank or a similar financial institution ncluding an insurance company; in any other case 15%.

3. Tax rate is 10% in case of royalties for equipment rental and fees for services ancillary or subsidiary thereto. For other cases, the tax rate is 15%.

4.22.3 Foreign Tax Credits

The provisions of Article 25 of the India-US tax treaty which provides for relief from Double Taxation provisions is briefly discussed in para 3.1.9.

4.23 Taxation of Foreign Dividends in India

4.23.1 Dividend income received from the specified foreign subsidiary will be taxable at the concessional rate of 15% on gross basis and no deduction for any expenditure or allowance will be allowed against the same.

4.23.2 A domestic company has to pay dividend distribution tax (DDT) at the rate of 15% on any amount declared, distributed or paid by way of dividend, whether out of the current or accumulated profits. Further, the reduction of amount of dividend received from the tax base for DDT is restricted to the amount received during the same financial year in which the dividend is declared, distributed or paid by the parent company.

4.24 Capital Gains on Sale of Shares of Foreign Company in India

4.24.1 Residents are taxable on their worldwide income in India. Thus, profits arising on sale of shares of a foreign company shall be liable to tax in the hands of Indian Company which is resident in India.

4.24.2 The profit arising from transfer of shares shall be treated as "Capital Gains'. These gains are to be considered as short term if shares are held for period up to 36 months and long term if shares are held for more than 36 months.

4.24.3 Therefore, depending upon period for which shares of the foreign Company were held by the Indian company, the gain may be classified as either as Short Term Capital Gain (STCG) or Long Term Capital Gain (LTCG). The tax rates on the capital gains are as under:

- LTCG on unlisted shares are taxed at 20% (plus the applicable surcharge and cess) . While calculating LTCG, indexation benefit shall be available.

- STCG on unlisted shares are taxed at normal corporate rate at 30% (plus the applicable surcharge and cess) [1]

4.24.4 Since the profit on sale of Investment shall form part of the accounting profit, it may be subjected to MAT @18.5%[2] if tax payable under the normal provisions of the IT Act is less than 18.5% of the book profits. However, the Indian Company may be able to set off the taxes paid under MAT against the normal tax liability in the future years where its normal tax liability exceeds MAT liability. The set off of MAT paid is available for a maximum period of 10 subsequent years.

4.24.5 In a case where shares of closely held company are transferred at a price lower than its fair market value (FMV), the difference between the sale price and the FMV is treated as deemed income in the hands of buyer company being a closely held company.(Section 56 (2)(viia) of the IT Act). Normally, the FMV of the shares have to be determined based on formula prescribed in Rule 11UA of the IT Rule which is almost similar to Net Asset Method subject to certain minor adjustments.

4.24.6 Given the fact that this transaction of sale of shares is between two associated

1 Surcharge is applicable @ 7% for resident companies having income exceeding INR 10 million but less than or equal to INR 100 million, and @ 12% for resident companies having income exceeding INR 100 million.
Education Cess is levied @ 3%.

2 Same as per Note 1.

enterprises, the shares have to be computed in accordance with the Transfer pricing Provisions. As none of the TP methods are applicable for valuation of shares, the Discounted Cash Flow (DCF) method may be adopted for valuing the share.

4.24.7 Credit shall be available in India for the taxes paid in foreign company subject to DTAA and domestic law provisions of India.

4.25 Income Tax Regulations – Branch / Office outside India

4.25.1 Profits of the Branch / office outside India shall be required to be repatriated in accordance with the applicable FEMA regulations. Such profits shall be considered as income of Indian Entity and shall be charged at the tax rates applicable to Indian entity.

4.25.2 However, credit may be available in India for the taxes paid in foreign company subject to DTAA and domestic law provisions.

4.26 Transfer pricing Regulations

4.26.1 The provisions of transfer pricing has been discussed in para 3.1.6.

4.27 Thin Capitalisation

4.27.1 No prescribed debt-to-equity ratios or thin capitalisation rules exist under Indian taxation law. However, interest paid to related parties at rates or on terms that are considered unreasonably high may be disallowed by the tax officer under transfer pricing Regulations.

TAXATION IN US — EMPLOYEE PERSPECTIVE

4.28 Overview of Residency Rule in US

- The Indian entity may depute personnel to the US on secondment basis. During this period, he may qualify as a U.S. resident if he meets the Substantial Presence Test in USA.

- To meet this test, the individual must be physically present in the United

States for at least:

1. 31 days during the current year, AND

2. 183 days in aggregate during the 3-year period elaborated below :

    i. The total number of days he was present in the current calendar year, and

    ii. 1/3 of the days he was present during the 1st preceding calendar year, and

    iii. 1/6 of the days he was present during the 2nd preceding calendar year

- If he doesn't satisfy this condition he will be regarded as a non-resident alien.

Note: The aforesaid residency test is referred only for the purpose of illustration and is thus not exhaustive.

4.29 Scope of Income taxable in US and Taxability

- A US resident shall be taxable on the global income whereas a non-resident alien shall be taxable only in respect of US sourced income.

- If the personnel deputed to the US fulfills the residency test, his global income shall be subject to tax in US, besides thee are also disclosure requirements pertaining to global assets of such personnel.

- The individual is required to file a federal income tax return under section 6012 if he is resident of U.S. and the same needs to be ascertained for the respective tax year (1 January to 31 December).

- An individual is required to file a federal income tax return under section 6012 if he is citizen or resident of U.S. and the same needs to be ascertained for the respective tax year (1 Jan to 31 Dec).

– **U.S. Citizen**

Every person born or naturalized in the United States is a U.S. Citizen.

– **U.S. Resident for tax purpose [Section 7701(b)]**

- A person can qualify as a U.S. resident who meets either of two tests: the lawful permanent resident test or the substantial presence test (as discussed above).

- The US taxes its US Citizens on their worldwide income from whatever source derived, including wages, business income, and investment income and the personal tax rate is upto 39.6%. Therefore an Indian employee who is working in the US and who satisfies the residency test shall be subject to tax as Resident Alien on his global income in the US.

5.0 INVESTMENT IN IMMOVABLE PROPERTY IN INDIA – FEMA AND TAXATION ASPECTS

Chapter 5 Investment in Immovable Property in India – FEMA and Taxation Aspects

5.1 Background

5.1.1 India had emerged as a hot spot for investment in real estate by NRIs and Foreign nationals of India Origin (popularly known as PIOs). At a time, when most of the world economies are passing through highly fluctuating trends, India as a growing economy holds promise as one of the safest bet for investment in the real estate sector with growth potentials.

5.1.2 Acquisition of immovable property in India by persons resident outside India is regulated by Reserve Bank which frames regulations to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by persons residents outside India.

5.2 Acquisition and Transfer of Immovable Property in India by NRI / PIO

Particulars	NRI	PIO
Definition	A citizen of India resident outside India	An individual (not being a citizen of Pakistan or Bangladesh or Sir Lanka or Afghanistan or China or Iran or Nepal or Bhutan) who ■ at any time, held an Indian Passport or ■ who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).
Purchase of immovable property	A NRI can acquire by way of purchase any immovable property (other than agricultural land/ plantation	A PIO can acquire by way of purchase any immovable property (other than agricultural land/ plantation property / farm house) in India.

Particulars	NRI	PIO
	property / farm house) in India	
Transfer of immovable property	A NRI may transfer any immovable property in India to a person resident in India. He may transfer any immovable property (other than agricultural land or plantation property or farm house) to an Indian Citizen resident outside India or a PIO resident outside India	A PIO can transfer any immovable property in India (other than agricultural land / farm house / plantation property) by way of sale to a person resident in India. He may transfer agricultural land / farm house / plantation property in India, by way of gift or sale to a person resident in India. He may also transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India, who is a citizen of India or to a Person of Indian Origin resident outside India.
Gift/ Inheritance of immovable property		A PIO may acquire any immovable property (other than agricultural land/ plantation property / farm house) in India by way of gift from a person resident in India or a NRI or a PIO. A PIO may acquire any immovable property by way of inheritance from a person resident in India or a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force, at the time of acquisition of the property

5.3 Acquisition of immovable property by person resident outside India for carrying on a permitted activity

5.3.1 A person resident outside India who has established a Branch, Office or other place of business, excluding a Liaison Office, for carrying on in India any activity in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 may –

a. acquire any immovable property in India, which is necessary for or incidental to carrying on such activity, provided that all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and the person files with the Reserve Bank a declaration in the form IPI, not later than 90 days from the date of such acquisition; and

b. transfer by way of mortgage to an Authorised Dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) above.

5.4 Repatriation of Sale Proceeds

5.4.1 Repatriation of sale proceeds of immovable property which was originally purchased

- In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the Authorised Dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:

    i. the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;

    ii. the amount to be repatriated does not exceed:

        - the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or

        - the amount paid out of funds held in Foreign Currency Non-Resident Account, or

        - the foreign currency equivalent (as on the date of payment) of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property; and

iii. in the case of residential property, the repatriation of sale proceeds is restricted to maximum two such properties.

5.4.2 Immovable property acquired by way of inheritance/ legacy/ out of Rupee funds

- A Non-Resident Indian (NRI) / Person of Indian Origin (PIO) may remit an amount, not exceeding US$ 1,000,000 (US Dollar One million only) per financial year out of the balances held in NRO accounts / sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy / out of Rupee funds. This is subject to production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and payment of applicable taxes in India. Remittances exceeding US$ 1,000,000 (US Dollar One million only) in any financial year requires prior permission of the Reserve Bank.

- In cases of deed of settlement made by either of his parents or a close relative (as defined in Section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler, the original deed of settlement should be produced for the remittance. All remittances will be subject to payment of applicable taxes in India.

5.5 Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

5.5.1 Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than lease, not exceeding five years.

5.6 Purchase of Immovable Property in India by a Foreign National of Non-Indian Origin resident outside India

5.6.1 Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, they can acquire or transfer immovable property in India, on lease, not exceeding five years without the prior permission of the Reserve Bank.

5.6.2 Foreign Nationals of non-Indian origin, other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong can acquire immovable property in India on becoming resident in India in terms of Section 2(v) of the Foreign Exchange Management Act, 1999. In this connection, he has to satisfy the condition of period of stay. The type of visa granted should clearly indicate the intention to stay in India for an uncertain period to determine his residential status in terms of section 2(v) FEMA, 1999.

5.6.3 Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank cannot transfer such property without the prior permission of the Reserve Bank.

5.7 Tax Implications on Immovable Properties

5.7.1 Rental Income

- NRI/PIO can rent out residential / commercial property purchased out of foreign exchange / rupee funds, if the same are not required for immediate use. Rent received, being current income can be repatriated abroad after payment of applicable taxes.
- If the property is not let out, then the annual value of the house is considered as Income from House Property.

5.7.2 Purchase of Immovable Property

- There is no income tax implication upon purchase of immovable property in India.
- Section 56 of the Income-tax Act provides that where purchase consideration in respect of immovable property is less than the stamp duty valuation by an amount exceeding Rs. 50,000, the differential value will be taxable in the hands of the purchaser.

- Section 194-IA to the Income-tax Act provides for 1% withholding tax in respect of purchase of immovable property from a resident transferor at the time of credit or payment whichever is earlier where the total amount of consideration for the transfer equal to or exceeds Rs. 5 Million.

5.7.3 Sale of Immovable Property by NRI/PIOs

- There shall be capital gains (short term or long term) arising on sale of the property in the hands of the owner. In case, the sale consideration is less than the value as computed under Stamp Duty Regulations, then the value as per stamp duty regulations, shall be deemed to be the sale consideration.

- If the property is held for less than or equal to 3 years then the gains would be short term capital gains, and shall be taxed as per the normal slab rates.

- If the property has been held for more than 3 years then the resultant gain would be long term capital gains and will be subject to tax @ 20% plus applicable surcharge and cess. The benefit of indexation shall be available.

- The buyer shall deduct the withholding tax on the net capital gains arising on the sale of property while making payment to the seller under Section 195.

6.0

PITFALLS AND KEY CHALLENGES TO DOING BUSINESS IN INDIA

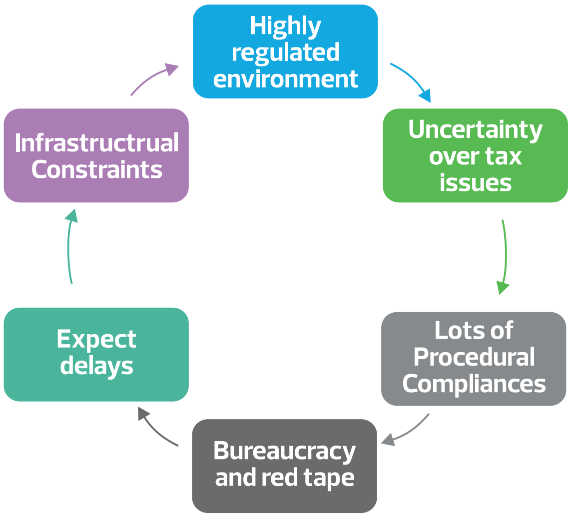
Chapter 6

Pitfalls and Key Challenges to Doing Business in India

6.1 Pitfalls and Key Challenges

6.1 Though India offers a tremendous potential in terms of its strategic location, its cosmopolitan societal structure, favourable demography, huge customer base, strong democratic and independent judiciary, still from an Investors' perspective there are still some concern areas, which needs to be considered before making any investment decision.

6.2 As per the World Bank Report 2015, India needs to catch up a lot in terms of providing business friendly environment to investors. Some of the key challenges, which needs to be considered while evaluating any investment decisions, have been briefly highlighted hereunder:



- **Highly regulated environment**

  There is a multiplicity of regulators which foreign investors have to deal with while doing business in India. This multiplicity of laws and institution potentially create regulatory overlaps, gaps and ambiguity on account of lack of clarity and thereby delays the process of setting up of a new business entity in India.

- **Uncertainty over tax issues**

  The taxation structure in India is still complex. There is an urgent need to bring stability and transparency of tax laws. Though the recent government has taken several steps to provide a stable and predictable taxation regime, the tax authorities on the ground are very aggressive leading to multiplicity of unwarranted litigation. Besides, corporate tax rate coupled with dividend distribution tax makes India a country with one of the world's highest tax rates.

- **Lots of Procedural Compliances**

  Currently, there are lot of procedural compliances required to be made by business enterprises on a day-to-day basis pertaining to the legal requirements under varied laws. However recently, steps have been taken to streamline the filing and compliance requirement wherever possible, such as in case of labour laws.

  The government is contemplating reforms in the labour law regime and is encouraging state-wise reforms to remove some onerous provisions in labour laws. The central government is in the process of amalgamating 44 labour laws into four sets of labour codes - code on wages, code on industrial relations, a code on social security and a code on working conditions and safety to promote friendlier labour-industry relations.

- **Bureaucratic Approach**

  One of the major growth impediments is resulting from the slackness of approach and attitude adopted by the bureaucracy which has generally been found to desist from taking path-breaking measures in terms of supporting the business policies. Recently, there have been measures taken to streamline the bureaucracy and make it more systemic, structured, approachable and practicable.

- **Infrastructural Constraints**

  For any economy to attract investment, it is important that there is a conducive business environment coupled with the physical infrastructure, road connectivity, logistical support, uninterrupted power supply, etc. For new business in India, one of the biggest roadblocks for development of infrastructure would be the issue of land acquisition for which there is no clear policy as yet. Further, most of the infrastructure projects in India suffer from delays in completion.

The delays are resulting from the environmental safeguards, guidelines and concerns which have proven to be one of the major reasons for delay in infrastructure projects.

- **Expect delays**

  It is pertinent that there shall in most of the cases be time lag in terms of the planned project implementation cycle and the actual implementation considering the varied factors which have been discussed hereinabove. Thus, businesses should accordingly formulate their entry strategies into India, taking into consideration the expected delay in the project implementation and the resulting incremental costs.

6.2 Concluding Remarks

Historically, Indian manufacturing was not considered globally competitive due to inflexible labour market, infrastructural constraints, high input costs and the economies of scale.

India has the history of underperforming to its true potential. It remains to be seen whether infrastructural constraints, high interest rates, indifferent bureaucracy and widespread corruption will play a detrimental role in India's growth story or the focused reform measures shall overcome such challenges.

Nevertheless, it is worth noting that the current political regime has taken note of the pitfalls which foreign investors face and are streamlining the processes and making a definitive move towards providing "ease of doing business" environment through their various policy initiatives.

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