Tax Insights

from India Tax & Regulatory Services

Changes to the FDI Policy notified

April 4, 2018

In brief

The Department of Industrial Policy and Promotion (DIPP) had issued Press Note 1 dated 23 January 2018, making certain amendments to the foreign direct investment (FDI) Policy of 2017. The proposed amendments were to be effective from the date of the FEMA notification. The Reserve Bank of India (RBI) has now issued the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2018 [FEMA 20(R)(1)] dated 26 March, 2018 amending FEMA 20(R) dated 07 November, 2017.

In detail

The key changes as per FEMA 20(R)(1) have been summarised below.

Foreign investment in investing companies, NBFCs and CICs

- FDI in (i) investing companies not registered as non-banking financial companies (NBFCs) with the RBI and (ii) Core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities should require prior Government approval.
- FDI in investing companies registered as NBFCs with the RBI shall be under the 100% automatic route.

Joint Audit of Investee Companies

Where a person resident outside India (PROI) who has made foreign investment, specifies a particular auditor/ audit firm with an international network, then the audit of the Indian investee company shall be undertaken by two or more auditors not forming part of the same network.

FDI in Air Transport Services

Existing regulations	Amended regulations
• Automatic route up to 49% (100% for NRIs and OCBs)	• 100% FDI allowed as follows*: – Automatic route up to 49% – Government route beyond 49% • 100% FDI under automatic route for NRIs and OCBs

** While Press Note 1 of 2018 did not mention FDI limit beyond 49% under the Government route, the notified regulations have amended the regulations to allow FDI beyond 49% under Government route.*

- FDI in Air India Limited allowed under approval route, subject to the following conditions:
  - FDI not to exceed 49%, either directly or indirectly;
  - Substantial ownership and effective control shall continue to be vested in Indian Nationals.

FDI in Construction Development: Townships, Housing, Built-up Infrastructure and Real Estate Broking

A new clause inserted, which states that real estate broking services do not amount to real estate business and 100% foreign investment is permitted under the automatic route.

FDI in SBRT

Existing regulations	Amended regulations
100% FDI allowed as follows: • Automatic route up to 49% • Government route beyond 49%	100% FDI under the automatic route

Key changes in conditions related to single brand retail trading (SBRT) are as follows:

- For the initial five years, incremental sourcing by overseas companies, including their group companies for the specific brand will count towards the mandatory 30% local sourcing commitment.
- The requirement of license agreement between brand owner and investor has been removed.
- A Committee to be formed under the Chairmanship of Secretary, DIPP, with representatives from NITI Aayog concerned Administrative Ministry and independent technical expert(s) to examine the claim of applicants of the products being in the nature of "state-of-art" and "cutting-edge" technology, where local sourcing is not possible and give recommendations for such relaxation.
- The following paragraphs have been deleted:
  - An Indian manufacturer is permitted to sell its own branded products in any manner, i.e., wholesale, retail, including through e-commerce platforms;
  - The Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in-house, and sources, at most 30% from Indian manufacturers.

FDI in Pharmaceuticals

The definition of medical devices amended in the regulations and its reference to Drugs and Cosmetics Act removed.

FDI in Power Exchanges

Foreign Institutional Investor/ Foreign Portfolio Investor permitted to invest even under the primary route (erstwhile only permitted under secondary route) within the overall cap of 49% in power exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.

Others

- Issue of capital instruments under the following situations now permitted under the automatic route, provided the sector is under the automatic route:
  - Swap of capital instruments (permitted under the existing regulation);
  - Import of capital goods/ machinery/ equipment (excluding second-hand machinery); or
  - Against pre-operative/ pre-incorporation expenses (including payments of rent etc.).
- Government approval to be obtained provided the sector is under the Government route.
- The Press Note provided for certain FDI proposals from countries of concern to be examined by Competent Authorities, i.e., DIPP/ Nodal Administrative Ministries/ Departments. However, a corresponding change has not been notified in FEMA 20(R)(1).

The takeaways

The amendments including changes related to liberalisation of various sectors, *viz.* SBRT, Air Transport Services proposed *vide* the Press Note are now effective. The long awaited relaxations, especially in SBRT, are a positive change and could enhance foreign inflows into India.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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