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CORPORATE UPDATE

IN THIS ISSUE

DIRECT TAX

INTERNATIONAL TAXATION

I. Capital Gains arising to a Mauritian Company not liable to tax in India under the India - Mauritius Double Taxation Avoidance Agreement ('DTAA') [CIT v. JSH (Mauritius) Ltd. TS-308-HC-2017 (Bombay)]

Recently, the Bombay High Court held that capital gains arising from the transfer of investments in an Indian Company to another group company are not chargeable to tax in India in terms of erstwhile provisions of Article 13 of the DTAA between India and Mauritius.

The tax payer is a company incorporated in Mauritius and has made certain investments in an Indian Company in 1996. Such investments were transferred in 2009 to another group company and a ruling was sought from the Authority of Advance Ruling (AAR) to ascertain the taxability of capital gains arising from such transfer. The AAR ruled in the favour of the tax payer.

Against the aforementioned ruling, the tax authorities preferred a Writ Petition before the Bombay High Court. The High Court held as under:

- The taxpayer was holding a valid Global Business License issued by Financial Service Authorities of Mauritius and had also been issued a Tax Residency Certificate ('TRC') by the Mauritian tax authority;
- The shares were held by the company for a long period of 13 years which suggest the bona fide intent of the company and evidencing that the company is not a fly-by-night or shell company;
- Reliance was placed on the Apex Court in the case of UOI v. Azadi Bachao Andolan & Anr. [2003] 263 ITR 706 (SC) wherein it was observed that treaty shopping was not illegal and its legality cannot be questioned even if consider improper by a section of society;
- The provisions of Explanation 5 to section 9(1)(i) would not be applicable in the present case, as the taxpayer was covered by the provisions of the tax treaty and as per the tax treaty it could only be taxed in Mauritius.

Accordingly, it was held by the High Court that capital gains on the sale of shares by the taxpayer was not liable to capital gains tax in view of Article 13(4) of the DTAA.

It may also be noteworthy that aforementioned provision of Article 13 of the DTAA between India and Mauritius has since, been amended , whereby, India gets the taxation rights on capital gains arising from alienation of shares acquired in an Indian company on or after April 1st, 2017.

Moreover, one may also note that the provisions of 'General Anti Avoidance Rules' ('GAAR') have been made effective from April 1st, 2017. The provisions of GAAR shall override the provisions of DTAAs in case of impermissible avoidance arrangements and as such, may have a bearing on the aforesaid decision.

II. Delhi High Court reaffirms the position that a Liaison office ['LO'] shall not be regarded as Permanent Establishment in India [DIT v.

Mitsui & Co. Ltd. ITA 13 & 334 / 2005 (Delhi High Court)]

The Delhi High Court has held that LO of the tax payer cannot be regarded as PE in India since it could not be established that it is engaged in carrying on the business activities of the tax payer in India.

The taxpayer is a company incorporated under the laws of Japan and has undertaken two power projects in India and has established an LO in respect of such projects in India. Since such LO was merely engaged in the activity of providing information to the overseas entities and therefore, no income was offered to tax in India by LO. However during the assessment proceedings the tax officer concluded that LO is engaged in the project activities and therefore constitutes PE of the assessee in India.
The matter reached the High Court wherein it was held that:

- Provisions of Article 5(2) of the India - Japan DTAA which list out specific place of business such as branch office, place of management etc. that fall within the definition of PE is an extension of Article 5(1) which deals with the constitution of PE in case of a fixed place of business in India. Thus all classes of permanent establishments as specified in Article 5(2) of the DTAA would be construed as a PE subject to the essential conditions of Article 5(1) being met. In this regard reliance was placed on the decision of this Delhi High Court in the case of National Petroleum Company Construction v. Director of Income Tax (International Taxation) 2016 (383) ITR 648 (Del);
- In the instant case, the onus lies on the tax authority to demonstrate that LO constitutes PE in India and mere presence of such LO does not lead to the conclusion that the tax payer has PE in India. It was important to establish that such LO is used for the purpose of carrying on business activities in India;
- Furthermore, the LO falls within the scope of the provisions of Article 5(3) of the DTAA, which carves out an exclusion for activities of preparatory and auxiliary nature, which, if carried on, would not lead to incidence of a PE in terms of Article 5(1) and (2) of the DTAA;
- It was also observed that the tax payer was adhering to the conditions imposed by the RBI for running a LO, and the RBI had accepted the functioning of the LO for over three decades. This was suggestive that the assessee had complied with the conditions, one of which was that it could not carry on any business or trading activity in the LO;
- The tax authorities have not provided sufficient evidence to establish that notwithstanding the RBI permission the LO should be construed as PE of the tax payer in India.

In view of the above, it was held that the LO of the tax payer and its activities in India does not lead to the constitution of PE in India and therefore, income directly or indirectly attributable to such offices is not liable for taxation in India.

(Contributed by: Mr. Anuj Mathur/ Ms. Purnima Bajaj)

II. Standard Operating Procedure by Department of Industrial Policy & Promotion for processing FDI Proposals

CORPORATE LAW

RECENT NOTIFICATIONS

I. Companies (Appointment and Qualification of Directors) Amendment Rules, 2017

II. Clarification on Exemption provided to private companies in respect of reporting on internal financial controls by the auditor

III. Companies (Incorporation) Second Amendment Rules, 2017

TRANSFER PRICING

I. India notifies Multilateral Competent Authority Agreement for exchange of Country by Country Reports

The Ministry of Finance has notified the Multilateral Competent Authority Agreement for Exchange of Country by Country Reports vide notification dated July 28th, 2017. The said agreement was signed by India, being a party to the Convention on Mutual Administrative Assistance in Tax Matters at Beijing, China on May 12th, 2016.

DECISION:

Supreme Court confirms deletion of transfer pricing adjustment on interest on receivables from associated enterprises Pr. Commissioner of Income Tax-2 vs. M/s. Bachtel India Pvt. Ltd. [TS-591-SC-2017-TP]

The Hon'ble Supreme Court dismissed Special Leave Petition filed by the tax department challenging confirmation of deletion of transfer pricing adjustment by the Delhi High Court on the issue of outstanding receivables from associated enterprise.

The Delhi High Court had found that the Appellate Tribunal had returned a detailed finding of fact that the assessee was a debt-free company and the question of receiving any interest on receivables did not arise. Consequently, no substantial question of law arose for consideration and the appeal was dismissed.

Earlier, the Appellate Tribunal had, based on facts of the case and relying on the decision of Kusum Healthcare Pvt. Ltd. [TS-129-ITAT-2015(Del)-TP], held that no separate adjustment for interest on receivables was warranted.

(Contributed by: Mr. Harpreet Singh/ Ms. Ritu Theraja)

DOMESTIC TAXATION

I. Penalty under section 221 is levied only on arrears of tax, excluding interest under section 234A/B/C

In a recent decision in case of CIT v. Oryx Finance and Investment Pvt. Ltd. [TS-260-HC-2017(BOM)], the Bombay High Court has held that levy of penalty under section 221 is restricted only to arrears of tax excluding the interest under section 234A/B/C.

In the instant case, the return of the assessee was processed under section 143(1) of the Act, raising demand of Rs. 1,64,90,573/-, and penalty of Rs. 1,19,30,677/- under section 221(1) of the Act was imposed by the Tax Officer for default in payment of demand by the assessee.

The assessee filed Appeal before the Commissioner of Income Tax (Appeals) ["CIT(A)"], wherein the CIT(A) deleted the penalty imposed by the tax officer holding that the interest component to be excluded while levying penalty under section 221(1), and since the penalty exceeded tax component, the order was set aside. The Department filed an appeal before the Income Tax Appellate Tribunal ("the Tribunal"), wherein the Tribunal upheld the order of the CIT(A) and remitted the matter back to tax officer to recompute the penalty under section 221(1).

Aggrieved by the order of the Tribunal, the Revenue filed an appeal before the Bombay High Court, wherein the tax department contended that the CIT(A) and Tribunal have failed to consider Section 221(1) of the Act in its correct perspective and the terminology "tax in arrears" as used in section 221 for levy of penalty would also include interest under Section 234A, 234B and 234C of the Act. It was urged by the tax department that since the interest forms part of amount chargeable to tax under section 156 of the Act, the penalty under Section 221(1) is also imposable on the same.

The assessee submitted that tax, interest and penalty are separate components and the term "tax" would not include penalty or interest.

Referring to the provisions of section 2(43) of the Act, the High Court noted that the "tax" means income tax, super tax and/or the fringe benefit tax, and the definition of tax does not take within its fold the interest component. Referring to section 221, the High Court held that the aspect of default in payment of tax and the amount of interest payable are treated as distinct and separate components. It was observed that the section categorically and specifically states that when an assessee is in default or is deemed to be in default in making payment of tax, he shall in addition to the amount of arrears and the amount of interest payable under section 220(2), be liable, to pay penalty, however the amount of penalty shall not exceed the amount of tax in arrears. The said penalty for non-payment of the tax is in addition to the levy of interest under section 220(2). Further, in section 156 also tax, interest, penalty, fine are separately referred to. Even a notice of demand issued under section 156 in 'Form No.7' specifies tax and interest as separate components.

It thus held that the amount of penalty will have to be restricted on the arrears of tax, which would not include the interest component charged under section 220(2) of the Act.

Relying on the decision of Supreme Court in Harshad Shantilal Mehta v. Custodian and others [1998] 231 ITR 871 (SC) and the Bombay High Court decision in case of Commissioner of Income Tax v. P.B. Hathiramani [1994] 207 ITR 483 (Bom), the High Court held that the phraseology "tax in arrears" as envisaged under section 221 of the Act would not take within its realm the interest component. Thus, the High Court upheld the order of the ITAT restricting levy of penalty only on the arrears of tax excluding interest.

II. CBDT on guidelines for stay of demand [F. No.404/72/93-ITCC]

CBDT vide Office Memorandum dated July 31st, 2017 have made partial modification in the Instruction No. 1914 dated 21.03.1996 which contains guidelines on recovery of outstanding demand, including procedure for grant of stay. As per the revised guidelines, the standard rate prescribed in Office Memorandum dated February 29th, 2016 for recovery of demand have been revised to 20% (earlier it was 15%) of the disputed demand, where the demand is contested before CIT(A). Therefore, now the Tax Officer can ask for payment of 20% of the disputed demand as a pre- condition for granting stay on the balance tax demand.

(Contributed by: Ms. Ankita Mehra)

III. Disallowance under Section 14A of the Income-tax Act, 1961 shall not apply to Minimum Alternate Tax [ACIT vs. Vireet Investment Pvt Ltd (ITAT Delhi) (Special Bench)ITA No 502/Del/2012]

In a recent decision of the Special bench of the Tribunal, Delhi Bench, it was held that disallowance under Section 14A of the Income-tax Act, 1961 shall not be applicable while computing tax under Minimum Alternate Tax provisions(section 115JB) of the Income-tax Act, 1961.

The assessee was engaged in the business of finance and an investment company making investment in shares and securities. During the relevant Assessment Year 2008- 09, the assessee had filed its return of income paying tax under Section 115JB of the Act. The Assessee offered disallowance u/s 14A read with Rule 8D(iii) of Income-tax Rules, 1962 by taking only those investments which yielded exempt income during the year. The Assessing Officer, while computing the book profits under Section 115JB of the Act, made the addition of INR 2.82 crores on account of disallowance under Section 14A on proportionate basis and rejected the method used by the Assessee for computing disallowance u/s 14A.

The Assessee objected to the working of the disallowance under section 14A under Minimum Alternate Tax Provisions and hence, preferred an appeal with Commissioner of Income Tax (Appeals). The assessee contended that for the purpose of section 14A disallowance, only investments yielding exempt income are to be taken instead of total value of investments. The Commissioner of Income Tax (Appeals) rejected Assessee's contention on this issue but deleted disallowance under section 14A on Long Term Capital Gains exempt under 10(38) while working out Minimum Alternate Tax computation.

The matter travelled to the Tribunal and the main issue for consideration was whether computation methodology provided under Section 14A read with Rule 8D can be used while determining book profits under Minimum Alternate Tax. The Tribunal on examination of relevant facts and based on the legal precedents held as under:

- Section 115JB is a complete code in itself and it overrides all other provisions of the Income-tax Act, 1961.
- The intention of the legislature which is evident from a particular section in the statute should be interpreted in the same way, if a similar provision has been incorporated in a different section in the statute. The intention of the Legislature must be understood by reading the statute as a whole.
- Under the provisions of Section 14A, both direct and indirect expenditure in relation to the earning of exempt income are to be

reduced. Therefore, while interpreting the provisions of clause (f) of explanation 1 to section 115JB(2) and for the purpose of Minimum Alternate Tax computation also, both indirect and direct expenditure is to be reduced.

- The Delhi High Court in the case of CIT v. Goetze (India) Limited [2014] 361 ITR 505 (Del), was of the view that provisions of section 14A of the Act were applicable with full force to provisions of 115JB of the Income-tax Act, 1961. However, a contrary view was taken in another Delhi High Court decision in the case of Pr.CIT v. Bhushan Steel Ltd (ITA No. 593/2015).
- Further, the Delhi High Court in the case of Bhika Ram v. UOI (2000) 238 ITR 113, held that the later ruling should be followed even if it did not consider the earlier ruling. Supreme Court's judgement in the case of Vegetable Products Ltd [1973] 88 ITR 192 (SC), provided that if two reasonable constructions of a taxing provision are possible, that construction which favours the taxpayer must be adopted.

Based on above, The Delhi Tribunal held that the computation under clause (f) of Explanation 1 to Section 115JB(2) of the Act, is to be made without resorting to the computation as contemplated under Section 14A read with Rule 8D of the Income-tax Rules, 1962. Further, based on the Delhi High Court decision in the case of Cheminvest Ltd (2015) 378 ITR 33 (Del), it was further held that only those investments which yielded exempt income have to be considered for computing disallowance under section 14A.

This decision does provide more clarity on the issue of adoption of computation methodology given under section 14A read with Rule 8D while computing the book profits for Minimum Alternate Tax purposes, particularly since there were two conflicting decisions of jurisdictional high courts on this issue.

IV. CBDT's Clarifications on Computation of Book Profits for Indian Accounting Standards compliant Companies

The Central Government, in February 2015, had issued Indian Accounting Standards which are converged with the International Financial Reporting Standards. The same was to be adopted on a mandatory basis in a phased manner for companies meeting the requisite threshold, starting financial year 2016-17.

Adoption of Indian Accounting Standards has huge implications not only from an accounting perspective but also from an income tax perspective specially from the point of view of Minimum Alternate Tax. This is on account of the fact that the profits as declared in the financial statements form the very basis of computation of ‘book profits’ under Minimum Alternate Tax.

The Finance Act, 2017 amended the provisions of section 115JB of the Act so as to provide the framework for computation of book profit for the purposes of levying Minimum Alternate Tax in case of Indian Accounting Standards compliant companies. However, certain issues were being faced by the stakeholders from the implementation of the amended Minimum Alternate Tax provisions.

Central Board of Direct Taxes has now issued a circular no. 24/2017 dated July 25th,2017 which seeks to address majority of the issues, such as the meaning of the convergence date, starting point for computation of Minimum Alternate Tax, treatment of proposed dividend, provision of bad and doubtful debts, Non Convertible Debentures, interest free loans etc while computing the transition amount etc.

A copy of the aforesaid notification is enclosed herewith as Appendix 1.

(Contributed by: Ms. Ritu Gyamlani)

INDIRECT TAX

Goods & Services Tax (GST)

I. Update on GST

The biggest tax reform since Independence, the Goods and Services Tax (GST) was implemented w.e.f. July 1st, 2017 across India (including Jammu & Kashmir w.e.f. July 8th, 2017).
GST Council has fixed the GST rate for majority of goods and services @18%. Four tax schedules have been finalised @ 5%, 12%, 18% and 28% for varied goods & services. Few goods and services have exclusive tax rates, while some have been exempted from taxation. Goods and services falling under reverse charge mechanism have also been notified.

CBEC has also assigned jurisdictions and given power to officers of various Directorates.

With the roll out of the GST, 22 states in India have abolished their check posts. Also, till date, all the states/union territories (including J&K) have passed their respective SGST/UT-GST Acts. Some of the key developments during the month of July have been tracked herein below:

i) Export of goods & services under the GST regime

For export of goods & services, being zero-rated supplies, special procedures have been put in place. Exporter would have two options, while exporting goods/services i.e., either to export on payment of tax and claim refund of duty so paid, or as an alternate export goods/services under bond or Letter of undertaking (LUT) without payment of tax and claim refund of input tax credit. Detailed procedure with respect to furnishing of Bond or LUT has been prescribed by the Government vide various notifications and circulars issued during the month of July.

ii) MRP for unsold stock of pre-packaged commodities

The Central government has, vide Circular no. WM-10(31)/2017, permitted the manufacturers or packers or importers of pre-packaged commodities, to declare the revised MRP (including the increase in tax due to GST) on the stock unsold as on July 1st, 2017, for 3 months w.e.f. July1st to September 30th, 2017, by way of stamping or putting sticker or online printing subject to the following 3 conditions:

• The difference between the original and the revised MRP shall not exceed the increase in tax due to the implementation of GST.
• The revised MRP shall not overwrite the original MRP.
• The change in MRP shall be indicated by making at least 2 advertisements in newspapers and also by circulating notices to dealers and to the Director of Legal Metrology and Controllers of Legal Metrology.

Further, for reducing the MRP, a sticker with the revised lower MRP (inclusive of taxes) may be affixed and the same shall not cover the MRP declaration on the label of the package.

iii) Reverse Charge Mechanism under GST Regime

Under GST regime, the list of services covered under reverse charge mechanism (RCM) is almost similar to earlier service tax regime. The list of services on which RCM is applicable under GST covers import of services, GTA services, legal services by an advocate, services by an arbitral tribunal, sponsorship services, transportation of passenger by cab or accommodation services in a hotel, inns, etc. provided through an e-commerce operator, services provided by government with certain exceptions, services provided by a person located in non-taxable territory by way of transportation of goods up to custom station of India, services provided by a director, insurance agent, recovery agent, and author or music composer or photographer or artist or like kind.

Unlike under the earlier regime, following services shall no longer be covered under reverse charge mechanism, namely, Supply of Manpower Services, Security Services, Works Contract Service, Rent-a-Cab Service, Services provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent of the State Government.

Moreover, Partial reverse charge mechanism is no longer applicable under the GST regime.

Under earlier VAT regime of some states, reverse charge mechanism is applicable on sale of goods in the form of purchase tax. However, under GST regime, government has specified a list of goods which are covered under reverse charge mechanism and such list contains cashew nut not shelled or peeled, bidi wrapper leaves (tendu), tobacco leaves, silk yarn and supply of lottery tickets by government to lottery distributor or selling agent.

Further, vide Notification No. 8/2017-Central Tax (Rate) dt. June 28th, 2017, Government has exempted intra-state supplies of goods or services or both received by a registered person from an unregistered supplier provided the aggregate value of such supplies from any or all unregistered supplier shall not exceed INR 5,000/- in a day.

iv) Cancellation of Registration

Taxpayers who were provisionally migrated, but who are no longer required to be registered under GST regime, may apply for cancellation of their registration up to September 30th, 2017 (Press release dt. July 22nd, 2017).

v) Return filling under GST Regime – July and August 2017

Month	Description	Form	Due Date
July, 2017	Summary Return	GSTR3B	August 20th, 2017
	Outward Supplies Return	GSTR-1	September 01st to 05th, 2017
	Inward Supplies Return	GSTR-2	September 06th to 10th, 2017
	Monthly Return	GSTR-3	September 11th to 15th, 2017
August, 2017	Summary Return	GSTR-3B	September 20th, 2017
	Outward Supplies Return	GSTR-1	September 16th to 20th, 2017
	Inward Supplies Return	GSTR-2	September 21st to 25th, 2017
	Monthly Return	GSTR-3	September 26th to 30th, 2017

vi) Other Updates

• CBEC has issued Sectoral analysis in the form of FAQ's on E-Commerce Sector, Drugs & Pharmaceuticals, Handicrafts, Textile, Mining, Food processing, Exports & MSME. The Sectoral analyses provide brief clarifications on the day to day issues being faced by the industries engaged in such Sectors.

• Vide Notification No. 18/2017-Integrated Tax (Rate) read with Customs Notification No. 64/2017-Cus, IGST has been exempted on imports of goods and services by a unit/developer in an SEZ.

• MEIS (Merchandise Exports from India Scheme) & SEIS (Service Exports from India Scheme) scrips can only be used for payment of Basic customs duty (BCD) or additional duties of customs (on items not covered under GST) at the time of import under GST regime. The scrips cannot be utilized for payment of IGST and Compensation Cess. Similarly, scrips cannot be used for payment of CGST, SGST or IGST on domestic procurements.

(Contributed by: Mr.Shashank Goel/ Mr.Karan Chandna)

FOREIGN DIRECT INVESTMENT POLICY

RECENT NOTIFICATIONS

I. Issuance of roadmap by Ministry of Finance for obtaining Government approval post abolition of Foreign Investment Promotion Board

The Finance Minister Shri Arun Jaitley announced in the Annual Budget held on February 1st, 2017 that considering the Foreign Investment Promotion Board ('FIPB') has successfully implemented e-filing and online processing of FDI applications, it has now reached a stage where FIPB can be phased out.

Subsequently, the Union Cabinet of India chaired by Prime Minister Shri Narendra Modi on May 24th, 2017 approved the proposal to phase out the FIPB.

Consequently, a formal communication for necessary actions was issued by Department of Economic Affairs, Ministry of Finance ('DEA') through an Office Memorandum dated June 5, 2017. Pursuant to the Office Memorandum, the administrative departments under various ministries of Government of India have been put in charge to process the FDI applications in consultation with Department of Industrial Policy and Promotion, Ministry of Commerce ('DIPP').
We have discussed below the salient features of the roadmap which has been laid out by the Ministry of Finance vide the Office Memorandum.

Approval by the Concerned Administrative Ministries

Upon receipt of the application, the concerned administrative ministries / departments shall process the same in accordance with the Standard Operating Procedure to be laid down by DIPP in consultation with the administrative ministries / departments / sector regulators.

In respect of the applications in which there is a doubt about the administrative ministry concerned, the DIPP shall identify the administrative ministry/ department where the application will be processed. Further, the applications requiring Government approval shall continue to be received by the existing FIPB portal (i.e. http://fipb.gov.in) ('FIPB Portal'), the oversight of which shall be transferred to the DIPP from DEA within four weeks from the date of the Office Memorandum.

The Concerned Administrative Ministries responsible going forward to accord approval under the FDI Policy shall be as follows:

Sector/Activity	Administrative Department/ Ministry
Mining	Ministry of Mines
Defence	Department of Defence Production, Ministry of Defence
Cases relating to FDI in small arms	Ministry of Home Affairs
Broadcasting	Ministry of Information & Broadcasting
Print Media	Ministry of Information & Broadcasting
Civil Aviation	Ministry of Civil Aviation
Satellites	Department of Space
Telecom	Department of Telecommunications, Ministry of Communications
Private Security Agencies	Ministry of Home Affairs
Trading (single & multi brand and food products retail trading)	Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
Financial Services not regulated by a regulator or where there is more than one regulator or in respect of which there is doubt about the regulator (As per FDI Policy)	Department of Economic Affairs, Ministry of Finance
Banking (Public and Private) (As per FDI Policy)	Department of Financial Services, Ministry of Finance
Pharmaceuticals	Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers
Proposals by Non-Resident Indians (NRI)/Export Oriented Unit's (EOU's)	Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
Cases relating to issue of equityshares for import of capital goods / machinery/ equipment (excluding second hand machinery) (as per FDI Policy)	Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
Cases relating to issue of equityshares for pre-operative / pre-incorporation expenses (including payments of rent etc.) (As per FDI Policy)	Department of Industrial Policy & Promotion, Ministry of Commerce & Industry
Cases involving investments under automatic from Countries of Concern requiring securityclearance	Ministry of Home Affairs
Core Investment Company or an Indian Company engaged onlyin the activity of investing in the capital of other Indian companies	Department of Economic Affairs, Ministry of Finance

Standard Operating Procedures

• It has been specified in the Office Memorandum that Standard Operating Procedures ('SOP') shall be developed by DIPP in consultation with the concerned administrative ministries/ departments/ sectoral regulators so as to guide the administrative ministries/ department for processing of the FDI Proposals and ensure consistency of treatment and uniformity of approach across sectors.
• The SOP will also recognize that ordinarily, FDI applications, including those related to NRI/ EOU, food processing, single brand retail trading (SBRT) and multi brand retail trading (MBRT) would need to be decided in 60 days.

Transfer of Administrative Responsibilities

• The files currently being maintained with the FIPB Secretariat shall be transferred to the concerned administrative ministry/ department.
• All the past, present and future litigations and liabilities in various courts and adjudicatory forums in relation to approvals from the Government shall be handled by the concerned administrative ministry/ department.
• RTI applications and appeals pending with FIPB shall be transferred to respective administrative Ministry/ Department.
• Monitoring of compliance of conditions under the FDI Approvals including the past cases approved by FIPB shall be done by the concerned Administrative Ministries/ Department.
• The management and the responsibility for running the website i.e. fipb.gov.in shall be that of DIPP. Access to the FIPB Portal shall be

granted to the respective administrative ministry/ department.
• A joint quarterly review meeting will be undertaken by a committee co-chaired by the Secretary, DEA and the Secretary, DIPP on pendency of proposals with the government. The Secretary of the concerned Administrative Ministry/ Department may also be invited to attend the meeting.
• The Administrative Ministry/ Department will seek approval of the Minister-in-charge/ Cabinet Committee on Economic Affairs ('CCEA') on the application as per the existing FDI Policy.
• Concurrence of DIPP would be mandatory for FDI proposals which are proposed to be rejected by the competent authority or where approval is proposed by competent authority subject to additional conditions not provided in the FDI Policy.

(Source: PIB Press Release issued by Government of India dated May 24th, 2017, Office Memorandum F. No. 01/01/FC/2017-FIPB dated June 5th, 2017 issued by Ministry of Finance)

II. Standard Operating Procedure by Department of Industrial Policy & Promotion for processing FDI Proposals

Pursuant to the abolition of Foreign Investment and Promotion Board ('FIPB'), Department of Industrial Policy and Promotion ('DIPP') has issued Standard Operating Procedure ('SOP') for processing the FDI proposals on June 29th, 2017.The SOP sets out the process and procedure for filing and processing of FDI proposals, time limits and internal mechanisms for monitoring the processing of FDI proposals and the same is discussed in detail below.

Online Filing of Application

• Proposals requiring Government approval as per the Consolidated FDI Policy of 2016, as amended from time to time, shall now be filed online on the revamped Foreign Investment Facilitation Portal ('FIPB') portal, rechristened as Foreign Investment Facilitation Portal i.e. FIFP.
• The format and list of documents required to be enclosed with the application are detailed in Annexure 1 to the SOP.
• Under the revised framework, applications filed on the FIFP are no longer required to be submitted in physical copy with the Competent Authority, provided the application has been digitally signed. For applications which are not digitally signed, one signed physical copy would be required to be submitted with the respective competent authority within five (05) days of the receipt of communication from DIPP in this regard on the FIFP.
Competent Authorities for approval of Foreign Investment
• As and when the proposals for foreign investment are e-filed on the FIFP, DIPP is required to identify the Competent Authority for such proposals and accordingly e-transfer the proposals to the respective Competent Authority within two (02) days from the date of filing of the online application.
• For the complete list of Competent Authorities for grant of approval, please refer our update item relating to "Issuance of roadmap by Ministry of Finance for obtaining Government approval post abolition of Foreign Investment Promotion Board" as discussed above.

Procedure for processing of applications

• All proposal received on the FIFP shall in addition to the concerned competent authority, also be circulated within two (02) days to RBI for comments from a FEMA perspective. DIPP shall also circulate the same to Ministry of External Affairs ('MEA') and Department of Revenue ('DoR') for information. MEA and DoR may give their comments within the stipulated time period directly to the concerned administrative ministry/ department
Further, specific proposals requiring security clearances or FDI Policy related clarifications would have to be additionally referred to the Ministry of Home Affairs ('MHA') or DIPP respectively for their comments or clarifications, as the case may be.

Comments by Ministry of Home Affairs on proposals for investment in sectors requiring security clearance would be provided to the Competent Authority within 6 weeks from the online receipt of such proposals.
DIPP shall be required to provide clarification within 15 days on specific issues of FDI Policy as may be referred by the Competent Authority.

DIPP shall be required to provide clarification within 15 days on specific issues of FDI Policy as may be referred by the Competent Authority.

Consultation with any other Ministry/Department will require full justification and approval of the Secretary concerned. Ministries/Departments consulted on the proposal shall upload their comments on the portal within 4 weeks from the online receipt of the proposal.

• The Competent Authority shall, within 1 week, scrutinize the proposal and documents attached therewith and ask the applicant for relevant additional information/documents, if so required. All such queries shall be made online/emailed to the applicant so as to avoid delay. If no clarifications to the queries are received within 1 week, the applicants shall be reminded to expedite their clarifications. Time taken by the applicant in addressing the queries raised by the Competent Authority will be excluded from the time limits for disposal of proposal.

• Once the proposal is complete in all respects, which should not be later than six weeks/eight weeks from the receipt of the proposal, the Competent Authority shall, within the next two weeks, process the proposal for decision and convey the same to the applicant.

• Investment proposals requiring approval worth more than INR 5,000 crores shall have to be placed by the Competent Authority before the Cabinet Committee on Economic Affairs ('CCEA')for its consideration within the prescribed timelines.

• Accordingly, the concerned Competent Authority shall issue the approval letter to the applicant within a week of receipt of the favorable decision of CCEA. The approval letter would need to be in the format as prescribed in Annexure 2 to the SOP.

• In respect of proposals where the Competent Authority proposes to reject the proposals or in cases where conditions for approval are stipulated in addition to the conditions laid down in the FDI policy or sectoral laws/regulations, concurrence of DIPP shall compulsorily be sought by the Competent Authority within 8 weeks/10 weeks from the receipt of the proposal.

Timelines

The timeline for the purpose of processing the FDI proposals shall be computed from the date of filing the online application on FIFP and any delay by the applicant in addressing the queries raised bythe Competent Authority will be excluded from the time limits for disposal of the investment proposal.

The timelines have been tabulated in Section IV of the SOP .

Monitoring & Review

• Competent Authorities shall hold a regular monthly review on the foreign investment proposals pending with them.

• Joint quarterly review meeting, convened by DIPP, will be held under the co-chairmanship of Secretary, DIPP and Secretary, DEA on pendency of proposals with Government. The Secretary of the concerned Administrative Ministry/Department may also attend the meeting.

(Source: No. 1/8/2016-FC-1 dated June 29th, 2017 issued by Department of Industrial Policy & Promotion, Ministry of Commerce & Industry)

(Contributed by: Ms. Divya Ashta)

CORPORATE LAW

RECENT NOTIFICATIONS

I. Companies (Appointment and Qualification of Directors) Amendment Rules, 2017

The Ministry of Corporate Affairs [MCA] vide Notification No. G.S.R. 839 (E) dated 5th July, 2017 has notified Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 [hereinafter referred to as "amendment rules"] in order to amend the Companies (Appointment and Qualification of Directors) Rules, 2014. The amendment rules have come into force w.e.f. 6th July, 2017.

As per the amendment rules the following class of unlisted public companies has been exempted from having independent directors on their Board:

- a Joint Venture company;
- a Wholly owned subsidiary; and
- a dormant company.

II. Clarification on Exemption provided to private companies in respect of reporting on internal financial controls by the auditor

In its earlier notification dated 13th June 2017, the MCA had provided exemption to following private companies that their auditors need not report on adequacy of internal financial controls system in their audit report:

- A private company which is a one person company or a small company i.e.; or
- A private company which has turnover of less than Rs 50 crores as per the latest audited financial statement and has aggregate borrowings from banks, financial institutions or any body corporate at any point of time during financial year of less than Rs. 25 crores.

In this regard, now the MCA vide its General Circular 08/2017 dated 25th July, 2017, has clarified that this exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial years commencing on or after 1st April, 2016, which are made on or after the date of the said notification i.e. 13th June, 2017.

III. Companies (Incorporation) Second Amendment Rules, 2017

The MCA vide Notification No. G.S.R. 955(E) dated 27th July, 2017 has notified Companies (Incorporation) Second Amendment Rules, 2017 [hereinafter referred to as "amendment rules"] in order to amend the Companies (Incorporation) Rules, 2014. The amendment rules have come into force w.e.f. 27th July, 2017.

The amendment rules have simplified the process of shifting of registered office of the Company both within the same state but from one ROC to another as well as shifting from one state / union territory to another.

The significant highlights of the amendment rules with respect to shifting of registered office from one State/Union Territory to another are as under:

Till now, at least 14 days before the date of hearing the company was required to give notice to creditors and arrange publication of advertisements in newspapers. Now as per the amendment rules, the serving of notice to creditors and publication of advertisements in newspapers needs to be done not more than 30 days before the filing of application with Regional Director [RD].
Further, it has been provided that a copy of advertisement shall be served on RD immediately on its publication.

Earlier the company had to attach with Form INC-23 a copy of the objections received from any person whose interest was likely to be affected. Now, the company also needs to file its counter response to those objections with RD.

The amendment rules have also fixed a time frame of 15 days in case no objection has been received and of 60 days in case an objection has been received, for passing of an order for shifting of registered office by RD.

(Contributed by: Ms. Shikha Nagpal)

IMPORTANT

DATES TO REMEMBER

Particulars	Date
Deposit of TDS for the month of August, 2017	Sep 07, 2017
Date of deposit of GST for the month of July, 2017	Aug 25, 2017
Date of filing of GST Return in form 3B for registered person opting to file TRAN-1	Aug 28, 2017
Date of filing of GST Return in form 3B for the month of July, 2017 for all other cases	Aug 25, 2017

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