

Corporate Update

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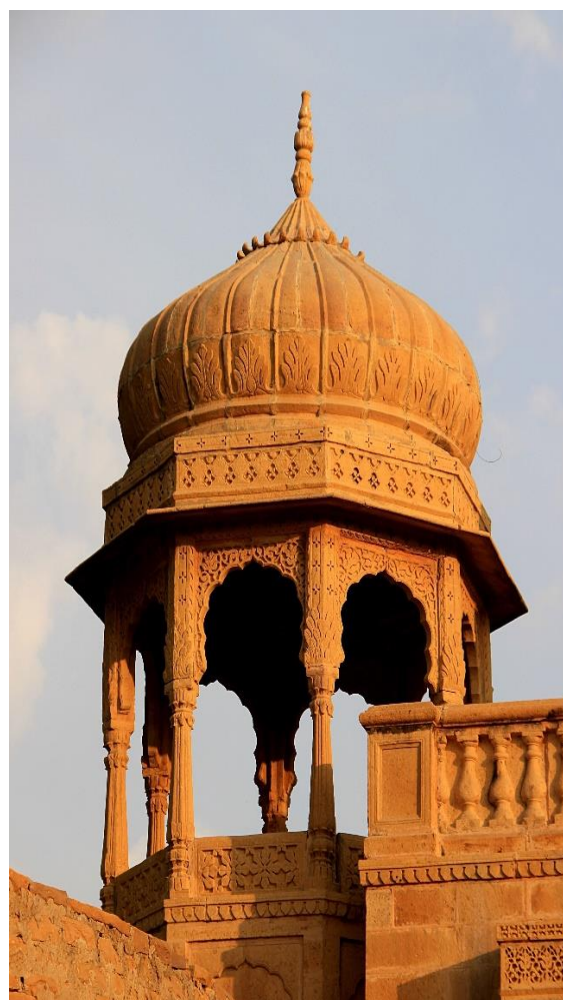
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FOREWORD



Dear Reader,

The current Corporate Update covers report on important cases on domestic, international taxation and regulatory changes under the FEMA Regulations.

After making substantial rationalisation in GST regulations and rates, the Finance Minister, Government of India recently made a statement that forthcoming Budget to be presented on February 01, 2026 will this time cover major rationalisation of Customs tariff.

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DIRECT TAX

INTERNATIONAL TAXATION

India-Qatar revised tax treaty notified

*CBDT Notification No. 154/2025 dated 24
October 2025*

The Central Board of Direct Taxes (CBDT) has notified the revised India-Qatar tax treaty which was signed on February 18, 2025. For India, the treaty provisions will apply for income arising on or after April 01, 2026. The original tax treaty between India and Qatar which was signed in 1999 shall cease to have effect on provisions of the revised treaty becoming operative.

The revised version of India–Qatar tax treaty incorporates international standards and provisions for avoidance of base erosion and profit shifting. These include coverage of fiscally transparent entities, introduction of ‘Principal Purpose Test’, modification of tie-breaker rules in case of dual residency of non-individuals, anti-fragmentation rules and expansion of scope of exchange of information.

The revised tax treaty also includes specific prohibition on the deduction of amounts paid by a PE to its head office or other offices (other than reimbursement of actual expenses). Other changes include introduction of service-PE, installation-PE and revision of beneficial ownership threshold to avail concessional tax rate on dividend income in source state.

The revised treaty aligns with global tax practices targeting tax avoidance arrangements and strengthening anti-abuse provisions.



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Multilateral Convention can only be enforced under specific notification u/s 90(1) of the Income-Tax Act, 1961

*Sky High Appeal XLIII Leasing Company
Limited v. ACIT [TS-1085-ITAT-2025(Mum)]
Kosi Aviation Leasing Ltd v. ACIT [TS-1296-
ITAT-2025(DEL)]*

In 2017, the OECD rolled out the Multilateral Convention as a measure to counter base erosion and profit shifting. This convention has the effect of modifying ‘covered’ tax treaties without the need of any amendment of such tax treaties at a bilateral level. As of today, 107 countries have signed such Multilateral Convention, including India.

After undertaking necessary formalities, the Indian Government notified the aforesaid multilateral convention in its Official Gazette on August 09, 2019, vide Notification No. 57/2019. Upon such notification, the modifications to covered tax treaties as stipulated by the MLI would be applicable from their respective prescribed date.

Recently, the applicability of MLI to the India-Ireland tax treaty (which is also covered under the MLI) has come into question. Ireland, with its favourable tax framework, is known to be a hub for airline leasing and service industry. Pursuant to introduction of Principal Purpose Test by the MLI, the benefit of Ireland’s tax treaty with India have been denied.

However, taxpayers have argued that the aforesaid notification all by itself, lacks legal

binding force to put into operation, the provisions of the MLI to the India-Ireland tax treaty. Rather, a country wise notification is necessary for the MLI to enter into force for each covered tax treaty. The revenue authorities maintain that in terms of the aforesaid notification, the MLI has entered into force for all covered tax treaties.

Recently, in a string of decisions of various benches of the tax Tribunal dealing with the Irish airline leasing industry, the view of the taxpayer has been upheld. Accordingly, it was held that the MLI is not applicable to the existing tax treaty in the absence of a separate and specific notification pertaining to the India-Ireland tax treaty. As such, the provisions of the unmodified India-Ireland tax treaty continue to apply.

This analogy has been borrowed from another tax controversy revolving around the applicability of 'Most Favoured Nation' (MFN) clause. The MFN clause exists in various Indian treaties with European countries and provides for favourable tax treatment if such provision exists in another qualifying tax treaty. Recently, the Indian Supreme Court in *Nestle SA* ruled that such MFN clause shall not have automatic application. Rather, the MFN clause shall take into effect only when the Government issues a separate notification to give effect to any amendment or a protocol relating to a tax treaty.

The tax tribunal, while relying on the Supreme Court decision of *Nestle SA*, have laid down the following principles:

- MLI has the effect of modifying/altering the tax treaties and in the absence of specific notification u/s 90(1) of the Act, MLI does not become a binding force under domestic law and is not legally enforceable.

- The process of notification is not a mere procedural formality but a substantive safeguard to ensure that taxpayers were not subjected to unincorporated treaty obligations, especially where different countries had taken varying positions and reservations under the MLI.
- The "synthesised text" circulated by India and the treaty partner is merely explanatory in nature, intended to aid understanding, and does not constitute a legal instrument with binding force.
- Although a tax treaty may be designated as a "Covered Tax Agreement" under the MLI, no separate notification had been issued under the Act incorporating the MLI provisions into the tax treaty.
- The general omnibus notification issued on August 09, 2019 is not sufficient to implement the modifications to the tax treaties as a result of MLI. Rather, a separate notification u/s 90(1) of the Act is mandatorily required qua each tax treaty to validate the amendments brought in the said treaty by the MLI.
- In the absence of specific notification u/s 90(1) of the Act, amendment/modification brought in by the MLI cannot be invoked to deny treaty benefits.

The aforesaid decisions have brought about a sense of relief to the Irish airline leasing industry which have substantial Indian operations. However, keeping in view the enormity of the matter and the stakes involved, this matter is likely to be contested by the revenue authorities. Thus, it has to be seen whether the ratio of the aforesaid Tribunal decisions withstand the judicial test.



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Re-characterisation of Netflix India as a full-fledged entrepreneur or content-provider is held to contrary to record and law

[TS-636-ITAT-2025(Mum)-TP]

In a recent decision, the Hon'ble Mumbai ITAT deleted the transfer pricing addition made by TPO/ DRP in relation to remuneration received by Netflix India (assessee) for providing limited-risk distribution services. The ITAT held that re-characterisation of Netflix India (assessee) as a full-fledged entrepreneur or content-provider by conflating technological presence with economic ownership is held to contrary to record and law. The ITAT also decided on the benchmarking methodology adopted by the assessee and the TPO/DRP.

On the facts of the case, Netflix Inc. is a company registered in US and is a globally renowned subscription-based entertainment enterprise. It has invested in developing and maintaining the content library, service architecture, proprietary streaming technology, infrastructure, trademarks, and other intellectual property assets which form the backbone of its global operations.

For non-US territories, up to December 31, 2020, Netflix US granted a licence to its associated enterprise, Netflix International B.V. (NIBV), Netherlands. NIBV entered into Distribution Agreement with Netflix India in 2017. Later, such agreement was entered into with Netflix US in 2021. These agreements were materially identical in their terms.

Under these agreements, Netflix India's role was confined to the distribution of access to the Netflix Service. It neither performed any other function nor owned any assets or assumed any risks beyond those typically borne by a limited-risk distributor. It was not involved in content creation, technology development, or global decision-making. All significant functions were performed and controlled by the Associated Enterprises, while Netflix India merely facilitated distribution of access to the platform within India.

Under the agreements, Netflix India remitted a distribution fee to NIBV/Netflix US. The distribution fee was computed as the total subscription revenue collected from Indian customers, net of local costs incurred, plus a fixed return on Indian sales. Thus, Netflix India was guaranteed a fixed profit margin after its operating costs a structure consistent with its characterisation as a limited-risk distributor.

The Assessee applied Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) and selected software distribution companies as comparable companies.

The Transfer Pricing Officer (TPO) rejected characterisation of the Assessee as a limited risk distributor and held that it bore significant entrepreneurial, regulatory, and operational risks, and was principal service provider of the Netflix content and platform in India. The TPO cited that the assessee incurred substantial expenditure on streaming, communication, and networking costs, which, according to him, could not have been incurred merely for a low-risk distribution role. Consequently, the TPO asserted that Netflix India had acquired both content and the technological platform on

licence from its AEs and was required to pay royalty or licence fees for the same.

The TPO rejected TNMM applied by the assessee and selected 'Other Method' to justify the transaction alleging that since Netflix India obtained technology and content on licence, the royalty should be determined on the basis of royalties paid for these components.

The TPO computed the royalty rate for content rights at 48.75 % of revenue, and for technology platform rights at 8.37 % of revenue, aggregating to 57.12 % of Netflix India's total revenue. The TPO also prepared a notional margin attribution table, thereby attributing 43 % of total margins to the Indian entity.

The Assessee preferred an appeal before Dispute Resolution Panel (DRP). The DRP accepted the approach of the TPO and functional analysis conducted by the TPO.

Before ITAT, the assessee contended that it is limited risk entity with routine and administrative functions and does not own nor controls any Intellectual property (IP) nor does it acquire or transfer any copyright in the content, technology or trademarks forming part of Netflix service. It referred to the preamble of the agreement which described it as a non-exclusive distributor of access to Netflix service and not as a licensee of IP.

The assessee also relied upon the judgement of **Hon'ble Supreme Court in Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT, [2021] 432 ITR 471 (SC)**, wherein it was held that payments made by distributors for the resale of software without the transfer of any copyright do not constitute "royalty."

The assessee submitted that the TPO and DRP erred in rejecting TNMM disregarding settled judicial precedents wherein it has been affirmed that when no direct comparables exist, distributors of software products may serve as functional analogues for media-content distributors. It also submitted that none of the agreements relied upon by TPO are comparable either in nature or substance.

The revenue asserted the orders of TPO and DRP.

The Hon'ble ITAT held as under:

- a. The agreements entered with AEs do not confer any licence to use, reproduce, alter or sub-licence content or technology. The inference drawn by TPO is inconsistent with agreement clauses referred by the TPO.
- b. The TNMM remains the most appropriate method given the functional profile, availability of data, and jurisprudential acceptance of similar comparables. The RoyaltyStat based Other Method and the ad hoc allocation of percentage to functions as a corroboration stands vitiated by non-application of mind and absence of comparability.
- c. The assessee has a limited risk profile and all the critical entrepreneurial risks market, investment, service liability, technological obsolescence are borne by the AEs.
- d. The TPO's /DRP's methodologies are against principles of OECD Model and as accepted by Indian law. Transfer pricing seeks parity between controlled and uncontrolled transactions, not the creation of income through internal allocation. To attribute 43% of global subscription revenue to an entity that

neither owns nor develops the underlying content or technology is to violate the symmetry between function, asset, and risk the triad that defines economic ownership.

Based on the aforesaid observation, the Hon'ble ITAT deleted the addition made by TPO/DRP. The Hon'ble ITAT also noted its concern regarding the increasing tendency of TPOs to conflate technological presence with economic ownership. It mentioned that unless the Indian entity controls, develops, or exploits the underlying intangible assets, its remuneration cannot exceed a routine distributor's return.



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Principal Purpose Test for capital gains exemption is satisfied if the operational expenditure threshold specified under India-Singapore DTAA is verified & certified by Inland Revenue Authority of Singapore

Fullerton Financial Holdings Pte. Ltd [TS-1458-ITAT-2025(Mum)]

The Mumbai Bench of the ITAT has held that capital gains earned by a Singapore entity, from the sale of shares acquired before April 01, 2017, are exempt from tax in India under Article 13(4A) of the DTAA between India and Singapore, as the Principal Purpose Test ("PPT") specified in Article 24A(1) and 24A(2) is satisfied based on the confirmation of the Inland Revenue Authority of Singapore ("IRAS").

In the instant case, the assessee, Fullerton Financial Holdings Pte. Ltd., a tax resident of

Singapore, was incorporated in Singapore in 2003 as an investment holding company. The assessee is wholly owned by Temasek Holdings Private Limited ("Temasek"), a body corporate constituted under the Singapore Minister for Finance (Incorporation) Act 1959, which is wholly owned by the Government of Singapore.

The assessee and its 100% subsidiary Angelica Investments Pte. Ltd. ("AIPL") made investments in Fullerton India Credit Co. Ltd. ("FICCL"), a Non-Banking Financial Company engaged in the SME and Micro Finance. The investment was made in the FY 2008-09 (i.e., prior to April 01, 2017), with a primary objective of holding it as a long-term investment.

The assessee sold its entire stake held in FICCL in FY 2021-22 to Sumitomo Mitsui Financial Group (a company incorporated in Japan), and earned long term capital gains of Rs. 681,32,13,572/- pursuant to the Sale. In the return of income, the assessee claimed that the gains that arose from the sale of shares in FICCL are not taxable in India in view of Article 13(4A) of the India-Singapore Double Taxation Avoidance Agreement ("the DTAA"), which governs capital gains arising from the alienation of shares acquired before April 01, 2017.

The tax officer, however, denied the benefit on the ground that the entity fails to meet the conditions under Article 24A (3) regarding minimum expenditure thresholds, holding a lack commercial substance and classifying it as a shell or conduit company. The tax officer observed that no employee was employed by the assessee, and the largest expense was the management fee, which was paid to a group entity only, in respect of which detailed hourly service information was not filed by the assessee.

The tax officer disregarded the evidence of the expenditure incurred by the assessee to satisfy the prescribed threshold under the DTAA to satisfy PPT. In this regard, the tax officer held that the letter issued by IRAS and KPMG to determine and certify that the assessee has met SGD 200,000 expenditure PPT criterion in the relevant periods under the DTAA, has no legal validity. It was thus held that the conditions specified under Article 24A(3) are not fulfilled. Consequently, the long-term capital gains arising from the transfer of such shares were held to be taxable in India under Article 13 of the DTAA and this action of the tax officer was confirmed by the Dispute Resolution Panel (DRP).

On an appeal before the ITAT, the assessee submitted that Article 24A (3) of the DTAA cannot be invoked unless the conditions provided under Article 24A(1) *[that primary purpose of the assessee was to take advantage of the DTAA]* and 24A(2) *[a shell or conduit company shall not be entitled to the benefit]* are satisfied. The key contentions of the assessee were as under:

- The 2005 amendment to the India-Singapore DTAA was aimed at promoting FDI into India, for which the capital gains exemption had been granted as a protocol to the DTAA. The assessee's investment in FICCL is precisely the type of foreign direct investment benefiting India.
- The assessee is a bona fide long-term investor with a global portfolio, including investments in Singapore, India, Cambodia, the People's Republic of China, Malaysia and other Asian Countries.
- There is no treaty shopping in the present case, nor any third party or country

involved, as the assessee is wholly owned by the Government of Singapore.

- Since the ultimate ownership is of the Government of Singapore itself, the affairs of the assessee cannot be said to have been arranged primarily to obtain treaty benefits under the India-Singapore DTAA.
- The assessee has furnished substantial documentation evidencing its genuine business presence and continuous business operations in Singapore.
- Relying on the decision of the Supreme Court in Vodafone International Holdings II.V. [2012] 17 Taxmann.com 202, it was submitted that to determine whether a structure was preordained solely to avoid tax, one must consider factors such as, "the concept of participation in investment, the duration of time during which the Holding Structure exists, the Period of business operations in India, the generation of taxable revenues in India, the timing of the exit the continuity of business in such exit.
- The Revenue must disregard or object to the holding structure "at the threshold" and not at a subsequent stage. The investment by assessee/AIPL in FICCL has existed for more than 10 years and no objection at any time was raised during its existence by the department. In fact, the approval for investing in FICCL. was also obtained from the Reserve Bank of India.
- A conduit entity is one that merely serves as an intermediary for another entity that is not entitled to the benefits of the DTAA. In the present case, the assessee cannot be a conduit for its parent entity, which is government-owned and itself eligible to

claim benefits under the India-Singapore DTAA.

The tax department submitted that the lack of operational expenditure, absence of employees and infrastructure, and the nature of expenses incurred all point to FFH being a shell or conduit entity.

Based on the above, the ITAT noted that the issue under consideration is that whether the assessee satisfies the Principal Purpose Test (PPT) prescribed under Article 24A (1) and (2) of the India – Singapore DTAA for availing treaty benefit under Article 13(4A) in respect of the impugned transaction.

The ITAT expounds that the application of the PPT requires a substantive examination of the assessee's commercial rationale, governance framework, economic substance, and functional control in relation to the transaction. The relevant factors would include whether the assessee carried on genuine investment and management activities from Singapore; whether the Board of Directors exercised effective decision-making in Singapore; and whether the investment in FICCL formed part of its long-term strategic portfolio rather than a mere conduit arrangement intended to channel gains through a low-tax jurisdiction.

Examining the facts of the case, the ITAT held as under:

- The assessee is an incorporated and registered entity in Singapore and functions as an investing and operating platform of Temasek (direct government owned entity). The board comprises of experienced professionals maintaining substance and control in Singapore and has investments spanning in multiple jurisdictions. The assessee functions as Temasek's dedicated investment and

operating platform in the financial services sector across Asia, with a strategic focus on small and medium enterprise (SME) and mass-market banking segments.

- The assessee has an independent management, economic substance, and operational control, and therefore does not fit the description of a conduit company.
- In international tax jurisprudence, a "conduit company" refers to an intermediary entity interposed between the source and ultimate recipient of income, which merely acts as a pass-through without any real economic or commercial substance of its own.
- The assessee maintains its management and control in Singapore, where all key investment and strategic decisions are undertaken through regular meetings of its Board and sub-committees.
- The incurrence of expenditures that are duly verified, audited, and in compliance with Singapore's accounting and transfer pricing regulations evidences genuine and continuous business operations in Singapore. This is affirmed by the confirmation from the Inland Revenue Authority of Singapore issued in this regard. The documents submitted by the assessee thus substantiate that the prescribed expenditure test under Article 24A (3) of the DTAA is satisfied.
- The ultimate beneficial owner of the assessee is the Government of Singapore. If at all any entity were to be regarded as earning the income, it would be the Singapore Sovereign itself, which is not subject to tax under the domestic

tax law of India by virtue of the principle of sovereign immunity.

- The abovementioned facts collectively establish that the assessee is not a mere shell or conduit company but an entity that possesses demonstrable commercial substance and an independent economic presence in Singapore.

In view of the above, the ITAT held that the assessee satisfies the Principal Purpose Test under Article 24A (1) and (2) of the India – Singapore DTAA, and the claim of treaty benefit cannot be denied on this ground. Accordingly, the claim of the assessee was allowed.



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DOMESTIC TAXATION

Reassessment cannot be made on an issue decided in the assessee's favour by the High Court in earlier year

In a recent case of **Thaicom Public Company Ltd., [earlier known as Shin Satellite Public Company Ltd.] v/s. Assistant Commissioner of Income Tax, New Delhi [TS-1596-ITAT-2025(DEL)]**, the Income Tax Appellate Tribunal, Delhi (ITAT) has held that the Revenue cannot reopen an assessment based on the ground that the relevant issue, though decided in favour of the assessee, is pending before Hon'ble Supreme Court of India.

The assessee is a company incorporated in Thailand and is primarily engaged in the business of providing transponder services through its satellites in various countries including India. In the instant case, the Assessing Officer (AO) in respect of Assessment Year 2018-2019, issued an order under section 147 read with section 144C (13) of the Income Tax Act, 1961, stating that the assessment was reopened because the assessee had not offered to tax the income earned from Indian customers for providing digital broadcast services through its transponders. According to the AO, such income was taxable as "royalty" under Explanation 6 to section 9(1)(vi) of the Act and under Article 12 of the India–Thailand DTAA.

Aggrieved, the assessee filed objections before Dispute Resolution Panel (DRP) on the issue of validity of reopening of assessment, which confirmed the order of the AO.

In the appeal filed by the assessee before the ITAT, the department, relying on the decision of *Ernst & Young US LLP vs. ACIT 146 taxmann.com 64*, submitted that since no assessment under section 143(3) of the Act was made in the impugned assessment year, the AO can reopen the assessment, even in the absence of any tangible material.

The assessee submitted that it has no Permanent Establishment (PE) in India, therefore such receipts are not taxable in India as per Article 7 of India-Thailand DTAA. Also, this issue is recurring in nature and in the preceding assessment years, the Delhi High Court in assessee's own case [*Director of Income Tax vs. Shin Satellite Public Company Ltd. (earlier name of the assessee), ITA No. 500/2012*] has held that the receipts of the assessee do not constitute Royalty. Even, after amendment to

section 9(1)(vi) of the Act made by the Finance Act, 2012 are considered, still such receipts are not taxable in India in view of provisions of Article 12 of India- Thailand DTAA. Once, the issues have been decided in favour of the assessee by the Hon'ble High Court, the assessee had no reason to offer receipts from use of transponders in India in the year under consideration.

The assessee further submitted that the said judgment of Hon'ble Delhi High Court was later approved by the Hon'ble Supreme Court of India in the case of *Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT, 432 ITR 471 (SC)*. Therefore, it was submitted that the reopening of assessment was bad in law as the very basis on which reopening was initiated had already been decided by the Hon'ble High Court in favour of the assessee. For the above proposition, reliance was placed on the following judgments:

- Vaish Associates Advocates vs. ACIT, WPC No.3072/2015 decided by Hon'ble Delhi High Court on January 01, 2016; and
- Sahkari Khand Udyog Mandal Ltd. vs. ACIT, in Special Civil Application no. 3955/2014 decided by Hon'ble Gujarat High Court on March 31, 2014

The ITAT observed that the only reason for rejecting assessee's objections were that the Revenue has filed appeal against the order of Delhi High Court and the same is pending before the Hon'ble Supreme Court of India.

The ITAT held that the assessment cannot be allowed to be reopened for the reason that the issue is pending before Hon'ble Supreme Court of India specially, when the issue has been decided in the past in favour of the assessee by the Hon'ble High Court.

Once, the issue has been decided by the Hon'ble High Court in favour of the assessee, on the very same issue assessment for the subsequent assessment years cannot be reopened.

The ITAT, relying on the aforesaid decisions, held the notice under section 148 of the Act as bad in law. Consequently, the subsequent proceedings arising from invalid notice were held to be vitiated. Accordingly, the impugned order was quashed.



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REGULATORY COMPLIANCE

FOREIGN EXCHANGE MANAGEMENT ACT

Foreign Exchange Management (Export of Goods and Services) (Second Amendment) Regulations, 2025

The Reserve Bank of India ("RBI") has recently issued a Notification No. FEMA 23(R)/(7)/2025-RB dated November 13, 2025 under Foreign Exchange Management (Export of Goods and Services) Regulations, 2025 ("**Principal Regulations**"), amending Regulations 9 and 15.

The key changes under the Amendment Regulations are as follows:

a. Increase in time period for realization of export proceeds under Regulation 9.

- i. In terms of the Principal Regulations, the amount representing the full export value of goods/ software/ services exported was required to be realized and repatriated to India within nine months from the date of export or within such period as may be specified by RBI, in consultation with the Government, from time to time, from the date of export.
- ii. Further, where the export of goods/ software/ services has been made by units in Special Economic Zones (SEZs)/ Status Holder exporters/ Export Oriented Units (EOUs) and units in Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs), and Bio-Technology Parks (BTPs), as defined in the Foreign Trade Policy in force, the amount representing the full export value of goods or software was required to be realized and repatriated to India within nine months from the date of export.

Under the Amended Regulations, the period, within which the full export value of goods/ software/ services is required to be realized as in (i) above and in the case of export of goods/ software as in (ii) above has been increased from nine months to fifteen months. RBI's powers for specifying any period, in consultation with Central Govt., from time to time, from the date of export will continue to apply.

b. Increase in time period for shipment of goods in case of advance payments under Regulation 15.

In terms of the Principal Regulations, where an exporter receives advance payment (with or without interest), from a buyer / third party named in the export declaration made by the exporter, outside India, the exporter was required to ensure that the shipment of goods was made within one year from the date of receipt of advance payment.

Provided that, in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of the unutilized portion of advance payment or towards payment of interest could be made after the expiry of the period of one year without prior approval of RBI.

Under the Amended Regulations, the period for shipment of goods in case of advance payments against exports and the corresponding period for refund in the event of exporter's inability to make the shipment has been increased from one year to three years.

Further, in terms of sub-Registration (2) to Regulation 15 of the Principal Regulations, an exporter could receive advance payment where the export agreement itself duly provided for shipment of goods extending beyond the period of one year from the date of receipt of advance payment. Under the Amended Regulations, the said period has been increased from one year to three years.


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