Corporate Bytes

FDI Policy liberalised in SBRT, Coal, Contract Manufacturing & Digital Media

-Pawan Khatri, Associate

In furtherance of the assurances promised in the recent Budget Speech, The Cabinet Committee on Economic Affairs approved certain changes in the FDI policy. The changes in the FDI policy are –

- Single Brand Retail Trading –

1. SBRT Entities having more than 51% FDI are required to supply 30% goods locally wherein procurement for worldwide operations shall be considered towards the fulfilment of the sourcing requirement for a period of 5 years. The said cap of 5 years shall be lifted and all procurements made for global operations shall now be considered towards the fulfilment of the local sourcing requirement. This same shall be considered irrespective of the fact, whether the goods are subjected to domestic sale or export.
2. Procurements made for global operations were earlier to be counted towards fulfilment of local sourcing requirement only when such incremental sourcing was undertaken by either them or one of their group companies. The said condition shall be lifted and even current sourcing can now be undertaken on behalf of the company by unrelated third parties as well under a legally tenable agreement.
3. SBRT entities earlier were not allowed to initiate trading via online stores without opening brick and mortar stores. The said restriction has been lifted allowing SBRT entities to start trading via online stores without opening brick and mortar stores subject to the condition that they should open brick and mortar stores within 2 years of initiating online stores.

- Coal Mining –

100% FDI via automatic route has been approved for coal mining and other ancillary operations thereby. The existing policy however restricted the 100% FDI to coal mining operations pertaining to captive consumption in power projects, iron and steel and cement units.

- Contract Manufacturing –

The existing FDI policy was silent on Contract Manufacturing. 100% FDI under automatic route has now been allowed in contract manufacturing by any entity for investment and manufacturing through a contract either on both Principal to Principal and Principal to Agent basis.

- Digital Media –

The existing FDI policy was silent on FDI in Digital Media. 26% FDI under government route has now been allowed for entities undertaking uploading/ streaming of News & Current Affairs through Digital Media.

CCI introduces Green Channel Route for M&A approvals

-Divyadeep Manu, Associate

The Competition Commission of India ("**CCI**") is recognized as a watchdog with an objective of regulating and curbing illegal market practices such as cartelisation, abuse of dominant positions and arrangements that can have an adverse effect on competition in India. Amid its various functions, CCI also acts as a regulatory and approving body of such mergers and acquisitions ("**M&A**") which are outside the notified financial threshold ("**Combinations**"). According to CCI's official press release, dated 19.08.2019 ("**Press**

Release")[1] CCI has dealt with 666 Combinations since its inception.

Furthering the Central Government's policy of ease of doing business, the CCI has amended the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulation**") by notification dated 13.08.2019 and is made effective from 15.08.2019. The CCI has amended the Combination Regulation based on the recommendations of the Competition Law Review Committee ("**CLRC"**), chaired by Corporate Affairs Secretary Injeti Srinivas.

The amended Combination Regulation introduces Regulation 5A which provides a procedure with respect to notice for approval of Combinations under the Green Channel. The Green channel route is an automatic system of approval for Combinations which fall under the following category:

> "*The parties to the combination, their respective group entities and/or any entity in which they, directly or indirectly, hold shares and/or control:-*
>
> *(a) do not produce/provide a similar or identical or substitutable product(s) or service(s);*
>
> *(b) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade-in product(s) or provision of service(s) which are at different stage or level of production chain; and*
>
> *(c) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade-in product(s) or provision of service(s) which are complementary to each other.*"[2]

According to Regulation 5A of the amended Combination Regulation, if a combination falls under the above-mentioned category, the notifying party to a Combination is required to file a short form ("**Form I**") along with a declaration as provided under Schedule IV of the amended Combination Regulations, stating that they are eligible for a Green Channel approval. Upon receipt of an acknowledgement from CCI of such notice filed by the notifying party, the Combination shall be deemed to be approved.

Central Board of Direct Tax constitutes a dedicated cell for startups

- Sindhuja Kashyap, Associate.

Central Board of Direct Tax, Department of Revenue, Ministry of Finance has in furtherance to the government's announcement of easing the market for startups, has decided to constitute an independent cell to mitigate the difficulties faced by the Startups. A press release for the same was issued by the department on August 30, 2019 ("Press Release"). This followed the government's statement that it had received various inputs from stakeholders regarding difficulties faced by the start-ups in the tax regime. Further, the Finance Minister had also stated that Section 56(2)(viib) of the Income Tax Act, 1961 would not be applicable to the startup registered with DPIIT and that measure to mitigate the challenges faced by them would also be taken up.

As per the Press Release, the Start-Up Cell would deal with redressal of grievances and mitigate issues with regard to the administration of the Income Tax Act, 1961. Further, the Press Release states that the Start-ups can file their grievances with the O/o Under Secretary, ITA-I, Room No.245A, North Block, New Delhi – 110001. The filing is not limited to physical filing only but can also be done online at startupcell.cbdt@gov.in. One can also reach out the cell on their number 011- 23095479 /23093070 (F).

A dedicated cell for dealing with issues related to taxes as faced by startups is expected to provide a speedy

[1] PRESS RELEASE No. 8/2019-20, available at https://www.cci.gov.in/sites/default/files/press_release/PR82019-20.pdf

[2] Schedule III of the Combination Regulation

redressal and thereby attracting the growth of startups in the economy.

SEBI directs the mandatory implementation of its circular dated June, 05, 2015 through Sanction

- Bhavani Navaneedhan, Associate.

In order to enable Depositories to maintain a complete reconciled record of equity shares, including both physical and dematerialized shares, issued by the company, SEBI circular no. CIR/MRD/DP/10/2015 dated June 05, 2015 ("**Circular**"), inter alia directed Issuers/RTAs to

1. update Distinctive Number ("**DN**") information in respect of all physical share capital and overall DN range for dematerialized share capital for all listed companies;
2. take all necessary steps to update the DN database. If there is a mismatch in the DN information with the data provided/updated by the Stock Exchanges in the DN database, the Issuer/RTA shall take steps to match the records and update the same latest by December 31, 2015.

The aforesaid Circular also stipulated that failure by the Issuers/RTAs to ensure reconciliation of the records in terms of the said circular shall attract appropriate actions under the extant laws.

Despite follow-ups by Depositories, certain companies are yet to comply with the aforementioned Circular. Hence, in order to protect the interest of investors, with effect from August 01, 2019, Depositories are hereby directed: -

1. to freeze all the securities held by the promoters and directors of the listed companies that are not in compliance with the provisions of SEBI circular dated June 05, 2015;
2. not to affect any transfer, by way of sale, pledge, etc., of any of the securities, held by the promoters and directors of such non-compliant companies;
3. to freeze all related corporate benefits on the Beneficiary Owner account frozen as above;
4. to retain the freeze on the securities held by promoters and directors of non-compliant companies until the company complies with the directions provided in SEBI Circular. Depositories are advised to keep in abeyance the action mentioned above in specific cases where a moratorium on enforcement proceedings has been provided for under any Act, Court/ Tribunal Orders, etc.
5. to prominently disseminate the names of companies that are not in compliance with the aforementioned circular on the website of the exchanges/depositories, indicating that the concerned companies have not complied with SEBI Circular
6. Prior to revocation of suspension of trading of shares of any company, Exchanges should ensure compliance by the company with SEBI Circular and ensure availability of updated details of company's promoters (especially their PAN) and directors (especially their PAN and DIN), apart from ensuring compliance with other applicable regulatory norms.
7. The concerned Stock Exchanges and Depositories shall coordinate with each other and take the necessary steps to implement this circular.

Clarification on appointed date in the scheme of arrangement

- Raghav Gaind, Associate.

In a scheme of arrangement, the timing of transaction plays a vital role as the financial statements will reflect such change from the date of the arrangement. The date for the legal fiction is called the "Appointed Date" and the date on which the scheme of arrangement is actually completed is called the "Effective Date".

Based upon the judgement provided by the Supreme Court of India in the case of Marshall Sons & Company India Limited vs I.T.O, the parties to the scheme of the arrangement were encouraged to expressly set out the appointed date otherwise the scheme of arrangement would not take effect from the effective date. Some queries, however, stayed unaddressed.
Therefore, in order to answer the queries that remained unanswered, the Ministry of Corporate Affairs ("**MCA**") issued a clarification for the purpose of interpretation of Section 232(6) of the Companies Act, 2013 ("**Act**").

MCA, in its clarification, has mentioned that the appointed date may be a specific calendar date, or maybe tied to the occurrence of the event. It has further clarified that in case, the appointed date is based upon the occurrence of an event, then the same shall be mentioned in the scheme of arrangement. Such date shall also be the acquisition date for the purpose of relevant accounting standards.

With the clarification issued by the MCA, the parties entering into the scheme of arrangement have breathed a sigh of relief as it provides a wide range of flexibility for the parties.

Relief for startups from paying Income Tax on account of sale of shares at a premium

-Raghav Gaind, Associate

The Finance Act, 2009 introduced Section 56(2)(vii) of the Income Tax Act ("**Act**") or the concept of Angel Tax with the purpose of curbing the practice of money laundering or stopping shell companies.

As per the provisions of the Act, if an individual or HUF, in the previous year, from any individual or a group, receive:

- any sum of money without consideration, the aggregate value of which exceeds INR 50,000/-, the whole of the aggregate shall be taxable;
- any immovable property-

    1. without consideration, the stamp duty value of which exceeds INR 50,000/-, the stamp duty value of such property is taxable;
    2. with the consideration which is less than the stamp duty value of the property and the difference is more than INR 50,000/- then such difference is taxable.

- any movable property-

    1. without consideration, the fair market value of which exceeds INR 50,000/-, the whole of the aggregate fair market value is taxable;
    2. with the consideration which is less than the fair market value of the property and the difference is more than INR 50,000/- then such difference is taxable.

Earlier, the government used to tax any amount raised by start-ups exceeding the fair market value of the shares referred to as Angel Tax under the head income of income sources at 30%. For start-ups, this tax was a major obstacle in raising money from investors.

Therefore, as part of the range of measures taken to boost the Indian economy, the government has exempted the start-ups from Section 56(2) of the Act wherein the start-ups are required to pay a certain amount as tax if they receive any investment at an amount exceeding the fair market value of the shares.

This amendment by the government has encouraged approximately 24,000 start-ups registered with the Department for Promotion of Industry and Industrial Trade (DPIIT). It is also mentioned that the relief will be provided to the companies who have served with the show cause notice in regard to income accrued exceeding the fair market value.

Simplification of incorporation of Section 8 Companies

- Mariam Monaza, Associate

The Ministry of Corporate Affairs ("**MCA"**) has simplified the process of incorporating a section 8 Company through the Companies (Incorporation) Sixth Amendment Rules, 2019. As per the new amendments, Companies with charitable objectives do not require the filing of INC-12. Such companies can now be integrated by either reserving names through Run and filing SPICe thereafter or by filing SPICe directly. The License number of companies will also be allotted during the time of incorporation itself.

It is also to be noted that all INC-12 SRNs for Section 8 Companies will be rejected as on August 15, at the respective ROCs, and the applicants can directly file SPICe for obtaining License Number and for the incorporation of Section 8 Companies.

The MCA has also stated that there will be a time lag in processing the SPICe forms filed by applicants who have already been allotted License Numbers.

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