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FEMA – Employees deputed to Indian group company may receive salary in their foreign bank account

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Background

As per the FEMA¹ Regulations, 2000², a foreign citizen resident in India or an Indian citizen, being an employee of a foreign company and on deputation to the office/ branch/ subsidiary/ joint venture in India of such foreign company could receive salary outside India in a foreign bank account, provided that income tax as per the Income Tax Act, 1961 (IT Act) was paid on the entire salary accrued in India.

Amendments

The Reserve Bank of India (RBI) vide a recent notification³ has included the words “group company” in the aforesaid Regulation thereby clarifying that even employees (being foreign citizens resident of India or Indian citizens on deputation to India) working for an office/branch/subsidiary/joint venture or group company in India would be eligible to receive salary outside India in a foreign bank account, provided that income tax as per the IT Act is paid on the entire salary accrued in India.

Group company is not specifically defined in the aforesaid Regulation. The definition of group company⁴ was introduced to clarify the ambiguity in the case of ‘sale of goods to group companies by a company engaged in cash and carry wholesale trading’ where it was a stipulation that sales to a group company should not exceed 25% of the total turnover of the venture. Further, this definition is also included in another FEMA Regulation⁵.

As per this definition, 'Group company' means two or more enterprises which, directly or indirectly, are in a position to :

- Exercise 26%, or more of voting rights in the other enterprise; or
- Appoint more than 50% of members of board of directors in the other enterprise.

Further, the notification clarifies that ‘company’ shall include a ‘Limited Liability Partnership’ as defined under the Limited Liability Partnership Act, 2008.

¹ Foreign Exchange Management Act, 1999

² Notification no. FEMA 199/2000-RB dated 30 September 2009

³ Notification no. FEMA 328/RB-2014/GSR 913(E) dated 3 December 2014

⁴ Press Note 2 of 2013

⁵ Notification no. FEMA 292/2013-RB/GSR 683(E) dated 4 October 2013 under Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000

Comments

As discussed above, in the past, only employees deputed to an office/branch/subsidiary/joint venture of a foreign company were covered by the Regulation. The words “group company” introduced, would cover intermediary companies of the holding company, if they are able to meet the aforesaid criteria. Hence, now employees on deputation working for a group company in India may continue to receive salary in their overseas bank account.

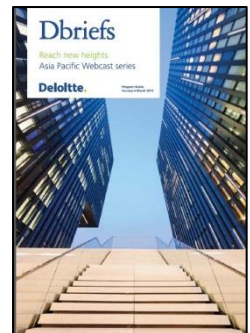
Source: Notification no. FEMA 328/RB-2014 dated 3 December 2014

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