

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

April 2018

1. GST Updates

(1) Postponement of e-way bill rules and the Effective date for coming into force:

E-way Bill pertains to the system of furnishing information prior to commencement of movement of goods of value more than INR 0.05million. The Government rescinded the earlier notification wherein it had appointed 1st day of February, 2018, as the date for roll out of e-way bill system¹.

As per the new notifications, for inter-state movement of goods, 01st April 2018 has been notified as the date from which e-way Bill rules shall come into force for interstate trade².

For intra-state movement of goods, e-way bill system to be introduced w.e.f. a date to be announced in a phased manner but not later than 01st June 2018.

(2) Exemption from payment of GST under reverse charge, on supplies received from unregistered dealer extended until 30th June 2018.

Inter-state³ as well as Intra-State⁴ supplies of goods or services or both received by a registered person from any supplier, who is not registered are currently exempted from payment of GST under Reverse Charge. The said exemption has been further extended till 30th June 2018.

2. Recent key changes to India immigration⁵

The Ministry of Home Affairs (MHA) has recently issued revised Frequently Asked Questions (FAQs) on different categories of visas and related immigration processes.

Below are key highlights:

Employment Visa (E Visa)	<p>E Visa can now be applied from a country other than the country of origin / domicile⁶.</p> <p>It is now clarified that, the minimum salary requirement will be worked out on a pro-rata basis for foreign nationals coming on an E visa for a period of less than one year to met minimum requirements.</p> <p>Change of employer while in India on an E visa, has been extended to joint ventures and consortiums and its subsidiaries which was earlier permitted only between holding and subsidiary companies.</p>
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1 Notification No. 11/2018 – Central Tax dated 02nd February,2018

2 Notification No.15/2018 – Central Tax dated 23rd March 2018

3 Notification No. 11/2018-Integrated Tax (Rate), dated. 23rd March 2018

4 Notification No. 10/2018 – Central Tax (Rate) dated 23rd March 2018

5 For more details please visit <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/GES%20Tax%20Alert/in-tax-ges-alert-immigration-changes-14march-noexp.pdf>

6 In the past, foreigners could apply for an E visa only from the country where they were residing for a period of 2 years or more.

Business Visa (B Visa)	Registration with the jurisdictional Foreigner Regional Registration Offices (FRRO) / Foreigner Registration Office (FRO) has now been made mandatory for B visa holders if their aggregate stay in India exceeds 180 days during a calendar year. Introduction of express B visa option, for issuance of visa within 48 hours for urgent requests, by the respective Indian mission. This facility is currently operational at the Indian mission in London
e Business Visa	It is now clarified that e business visa can be used for all activities permitted under normal business visa. Earlier, e business visa could only be used for casual business visits.

3. Corporate tax - Supreme Court⁷ holds that expenditure incurred for acquiring strategic investments subject to disallowance u/s 14A read with rule 8D⁸

Section 14A and Rule 8D provides for disallowance of expenditure incurred for earning exempt income. It also provides for ad hoc disallowance under Rule 8D when the taxpayer claims that there is no expenditure incurred in relation to earning of exempt income or the tax authorities are not satisfied having looked at the accounts with the claims of the taxpayer.

Taxpayers used to contend that no expenditure has been incurred for earning exempt dividend income when they used to make investments in companies claiming that it is for strategic investment purposes.

The Supreme Court had to consider if the dominant or main object would be a relevant consideration in determining as to whether expenditure incurred is 'in relation to the dividend income.

The Court ruled that the argument that these provisions will not apply if the "dominant intention" of the taxpayer was not to earn dividends but to gain control of the company or to hold as stock-in-trade is not acceptable. The Court ruled that these provisions applies irrespective of whether the shares are held to gain control or as stock-in-trade. However, where the shares are held as stock-in-trade, the expenditure incurred for earning business profits will have to be apportioned and allowed as a deduction.

The said ruling will increase the tax cost for all the holding companies who used to receive dividend income from subsidiaries and associates.

4. Reserve bank of India (RBI) notifies provisions relating to cross border mergers, amalgamations and arrangements⁹

The Ministry of Corporate Affairs (MCA) had on 13 April 2017 notified Section 234 of the Companies Act 2013 (Companies Act) and a new Rule 25A in Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (Companies Merger Rules) which inter alia provided for the process and provisions facilitating mergers and amalgamations between an Indian company and a foreign company i.e.

- Merger of a foreign company with an Indian company;
- Merger of an Indian company with a foreign company incorporated in any of the prescribed jurisdictions

The Companies Merger Rules prescribed for obtaining prior approval of the Reserve Bank of India (RBI) for cross border mergers.

RBI has on 20 March 2018 notified the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (the Regulations) dealing with merger, amalgamation or arrangement between Indian companies and foreign companies which are to be read with section 234 of the Companies Act and the corresponding Companies Merger Rules.

⁷ Maxopp Investment case,

⁸ The section provides for disallowance of expenditure incurred for earning exempt income. It also provides for ad hoc disallowance under Rule 8D when the taxpayer claims that there is no expenditure incurred in relation to earning of exempt income or the tax authorities are not satisfied having looked at the accounts with the claims of the taxpayer

⁹ For more details, please see our alert

<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Regulatory%20Alert/in-tax-regulatory-alert-fem-cross-border-merger-regulations-noexp.pdf>

5. Easing of access norms¹⁰ for investment by Foreign Portfolio Investors (FPIs)

Securities and Exchange Board of India (SEBI), the Indian capital markets regulator, has issued a circular dated 15 February 2018 providing changes in the current regulatory provisions to ease the access norms for investment by FPIs. Following are a few important changes by SEBI in the aforesaid circular:

1. FPI and global custodian (GC) on behalf of FPI may send request for change of the local custodian/ Designated Depository Participant (DDP). On receipt of no objection from the current custodian/ DDP, the new custodian/ DDP shall approve the change and intimate SEBI.
2. SEBI has now dispensed the requirement of resubmitting the Protected Cell Company (PCC)¹¹ / Multi Class share Vehicle (MCV) and information regarding investor group at the time of continuance of FPI registration in case there is no change in the information as compared to that furnished to the DDP earlier. However, DDP/ custodians will have to ensure necessary compliance prescribed by SEBI/ Reserve Bank of India (RBI) have been adhered to.
3. The new custodian/ DDP can now rely on the due diligence carried out by old custodian/ DDP at the time of change of custodian/ DDP of FPIs. Further, due diligence by new custodian/ DDP is required at the time of continuance of registration by FPI on an ongoing basis.
4. Exemption to FPIs having Multiple Investment Managers (MIM) structure from seeking prior approval from SEBI in case of Free of Cost (FOC) transfer of assets. The request for FOC transfer between FPIs having same Permanent Account Number (PAN) and also registered with SEBI showing MIM structure may now be processed by DDPs at their end.
5. Permitting FPIs operating under the MIM structure to appoint multiple custodians: The applicants may now appoint different local custodians
6. In case where common portfolio of Indian securities is maintained across all classes of shares/ fund/ sub-fund and broad based criteria is fulfilled at portfolio level after addition of share class, prior approval from DDP is not required. In case of addition of classes of shares for segregated portfolio, the FPI shall be required to obtain prior approval from DDP. On deletion of share classes of shares of segregated portfolio, an intimation should be provided to DDP. Further, in both the scenarios i.e. where new share class is added or where simultaneous addition of more than one share class is made, such that the newly added share class shall attain broad based status within 180 days from the date of approval issued by DDP.

¹⁰ SEBI circular CIR/IMD/FPIC?26/2018 dated 15 February 2018

¹¹ Protected cell company means a company where the details of the ultimate beneficial owners are not accessible or where the beneficial owners are not accessible or where the beneficial are ring fenced from each other or where the beneficial owners are ring fenced with regard to enforcement.

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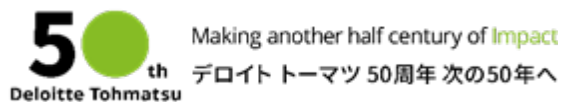
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