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Global Tax Update

India

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1. Single Master Form (SMF) for reporting of Foreign Investment in India

Present system of reporting total foreign investment in India made by persons resident outside India through eligible capital instruments in the investee Company or capital contribution in the Limited Liability Partnership (LLP) or investments in other investment vehicles involves use of various forms / platform / modes (online / offline) which leads to disintegrated reporting.

With the objective of integrating the reporting structures of various types of foreign investment in India, the Reserve Bank of India (RBI) had, in April 2018, proposed to introduce an online reporting facility through Single Master Form (SMF) which would subsume all reporting requirements, irrespective of the capital instrument through which the foreign investment is made.

RBI has now issued directions under the provisions of the Foreign Exchange Management Act, 1999 (reference A.P (DIR Series) Circular No. 30) on 7 June 2018 (RBI Circular) to lay down the roadmap for implementation of the reporting of foreign investments through SMF.

The key highlights of the RBI Circular are summarized below:

a) SMF would provide a facility for reporting total foreign investment by a non-resident in an Indian entity viz. Company, LLP and other investment vehicle viz. Real Estate Investment Trusts (REITs) / Infrastructure Investment Trusts (InvIts) / Alternative Investment Funds (AIFs).

b) Prior to implementation of SMF, RBI will provide an online interface to existing Company and LLP (Indian entities) for filing information on total foreign investment for a period of 15 days from 28 June 2018 to 12 July 2018 in a prescribed Entity Master Form.

c) Indian entities not complying with this pre-requisite i.e. filing of Entity Master Form will not be able to receive foreign investment (including indirect foreign investment) and will be considered as non-compliant with FEMA and regulations made thereunder.

d) In order to comply with the timeframe, RBI has advised Indian entities that have received foreign investments (including indirect foreign investment through downstream investment), to be ready with the details to be provided in the Entity Master Form and SMF as per the formats prescribed. The final form, when hosted by RBI on its website, will be available in the Master Directions – Reporting under FEMA.

e) SMF would subsume the following forms for reporting of foreign investment:

① Form FC-GPR - Issue of capital instruments by an Indian company to a person resident outside India

② Form FC-TRS - Transfer of capital instruments between a person resident outside India and a person resident in India

③ Form LLP-I - FDI in LLP through capital contribution and profit shares

④ Form LLP-II - Disinvestment/ transfer of capital contribution and profit shares in LLP

⑤ Form ESOP - Issue of ESOPs / sweat equity shares/ shares against exercise of ESOP by an Indian company to an employee resident outside India.

⑥ Form CN - Issue or transfer of convertible notes

⑦ Form DRR - Issue/transfer of Depository Receipts

⑧ Form DI – Reporting of downstream investment (indirect foreign investment) in a company or LLP

⑨ Form InVi- Reporting of investment by a person resident outside India in an investment vehicle

2. Segregated Nominee Account Structure (SNAS) in International Financial Service Centre (IFSC)

With a view to facilitate ease of market access to foreign investors, the Securities Exchange Board of India (SEBI)[1] has decided to permit SNAS for trading on stock exchanges situated in IFSC i.e. Gujarat International Finance Tech-City (GIFT City). A SNAS permits foreign investors to access its order through eligible Segregated Nominee Account Providers (SNAP). Foreign portfolio investors (FPI) along-with the brokers and trading/ clearing members of international stock exchanges registered with SEBI will be the eligible entities to offer SNAS.

SNAPs will have to ensure adherence to Know Your Client (KYC) information and provisions of Prevention of Money Laundering Act, 2002. In connection with KYC information, SEBI has clarified that the aforesaid information of the end client will remain confidential and will be shared with the regulators as and when required.

Further, the end client shall be permitted to open only one Segregated Nominee Account (SNA) with SNAP and will be assigned a Unique Client Code (UCC) which shall be unique across all end clients of all SNAPs. In order to ensure that the end client does not open more than one SNA, a Legal Entity Identifier (LEI) code will be used. The trades executed by an end client will be cleared and settled only through one clearing member.

Currently, SEBI has only permitted derivative transactions through SNAS.

3. Review of investment by FPI in debt instruments.

The Reserve Bank of India vide circular dated 27 April 2018 and 1 May 2018 had issued a revised framework for FPI investment in debt securities. Based on the feedback received from custodians, FPIs and other stakeholders, RBI vide circular dated 15 June 2018 provided some operational flexibility as well as transition path for FPIs and their custodians to adapt these regulations.

Some of the key amendments made by RBI are as follows:

a) Revision of minimum residual maturity requirement

RBI had permitted FPIs to invest in corporate bonds with minimum residual maturity of above one year. RBI has clarified short term investments in corporate bonds by an FPI shall not exceed 20% of the total investment of that FPI in corporate bonds. Further, this condition would not apply to the investment by FPIs in Security Receipts (SR) issued by Asset Reconstruction Companies.

b) Online monitoring of investments in Government Securities (G-Sec) and State Development Loans (SDL)

RBI had discontinued the auction mechanism for monitoring the FPI investments in G-Sec and SDL. Further, any breach of investment limits of G-Sec and SDL should be reversed. The FPIs and their custodians will be responsible for complying with all the limits for investment in G-secs and SDLs.

c) Single/ Group investor-wise limit in corporate bonds

The RBI vide circular dated 27 April 2018 had stated that investments made by an FPI in corporate bonds of an Indian company as well as related entities of such company shall not exceed 20% of the total corporate bond portfolio of the FPI. It has been clarified that in case where an FPI had investment in excess of 20% in a corporate bond as on 27 April 2018, then the FPI shall not make further investment in that corporate bonds.

In order to facilitate newly registered FPIs to build up a diversified portfolio, RBI has stated that FPIs registering after 27 April 2018 are permitted to comply with the condition of 20% investment by 31 March 2019 or six months from the date of registration, whichever is earlier.

The requirement of single/ group investor limits in corporate bonds would not be applicable to investments by multilateral financial institutions and investments by FPIs in SRs.

1 vide circular dated 24 May 2018

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