

# Global Tax Update

## India

Deloitte Tohmatsu Tax Co.

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### 1. Foreign Direct Investment (FDI) in Limited Liability Partnership (LLP) Liberalization

Reserve Bank of India (RBI) has notified<sup>1</sup> Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017 (FEMA Amendment Regulations). These regulations have substituted the earlier regulations on FDI in LLPs formed and registered under the LLP Act, 2008. The amendments take into account the changes earlier introduced by the Government of India in FDI Policy for investment in LLP by person resident outside India.

Key changes are as under:

- Company having FDI can be converted into an LLP under automatic route (as against government approval route earlier), if it is engaged in a sector where foreign investment up to 100% is permitted under automatic route and there are no FDI linked performance conditions.
- Restrictions on LLPs to avail ECB<sup>2</sup> removed. LLP can now access ECBs subject to further amendments being made in ECB framework.
- Restrictions on only Indian Company to be eligible to act as designated partner of LLP has now been removed. In other words, any body corporate including foreign company would be eligible to act as designated partner of LLP (through an individual nominee).

### 2. Process to facilitate payment of Provident Fund (PF) and withdrawal benefit to eligible international workers on the date of leaving service from India notified<sup>3</sup>

International Workers from foreign countries in India (IWs) are eligible for withdrawal of PF and Pension benefits as below: –

- IWs from countries with which India has an effective Social Security Agreement (SSA)<sup>4</sup> can withdraw PF upon ceasing to be an employee of covered establishment. Such IWs will also be eligible for pension benefit if the totalised service period is 10 years or more and withdrawal of pension contributions if the totalised service period does not meet the 10-year service period criteria.
- However, IWs from non-SSA countries can withdraw PF balances only upon retirement, on attaining the age of 58 years. Further such IWs will not be eligible for pension benefit if the service period with the covered establishment is less than 10 years.
- In order to facilitate payment of PF and withdrawal benefit to eligible IWs on the date of leaving service from India, following process is to be followed:
  - The employer should remit PF contribution for an IW within three days of the month in which such IW is retiring (i.e. leaving service in India). For instance, if the IW is leaving service on 7 April, the employer has to remit the PF contributions by 3 April.
  - Such contribution has to be made via a separate Electronic Challan cum Return (ECR).

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1 on 3 March 2017,

2 External Commercial Borrowings / foreign currency loan typically from the parent or from recognised foreign banks / institutions

3 IWU/7/(25)/2017/Payment of PF and Withdrawal Benefits - circular dated 23 March 2017

4 India and Japan have signed an SSA which is effective from 1 October 2017.

- The employer should submit the completed claim forms by the 6th of the month in which such IW is leaving service.
- The concerned PF officer shall settle the claim and credit the settlement amount to the Indian bank account of the IW on the date of leaving service in India.
- In case the IW desires interest for the month of retirement also, then PF settlement amount will be credited on the first day of the next month.
- Necessary provisions are being made in the software to ensure claim processing before exit from service.

### 3. Central Board of Direct Taxes (CBDT) issues guidelines for waiver of interest charged in case of failure to deduct tax at source in select circumstances

Currently, there are no provisions under the Indian domestic tax law for waiver of the interest of 1% per month<sup>5</sup> even in cases where there is a genuine reason for not deducting taxes at source. The CBDT has issued guidelines for waiver of interest and in that regard has given powers to the Chief Commissioner of Income-tax ('CCIT')/Director General of Income-tax ('DGIT') to reduce or waive the interest charged in specified cases.

Guidelines for reduction/waiver of interest

- The said relief may be granted only if the principal demand<sup>6</sup> has been fully paid or satisfactory arrangements have been made for the payment of the same. Also certain additional conditions for the reduction or waiver of interest may be imposed.
- In such situations, even if the interest is already paid by the deductor, the same can still be considered for waiver and can be refunded, subject to the specified conditions being fulfilled.

The Circular specifies the following class of cases in which reduction or waiver of interest can be considered:

#### In case of search and seizure

During the course of search and seizure<sup>7</sup>, or otherwise, if the books of accounts and other documents necessary for making deduction of tax at source, were seized and thereby the taxpayer is not able to deduct tax at source from any sum credited to any account in his books of accounts.

#### Retrospective amendments or subsequent Supreme Court decisions

In cases where the tax payer, relying on the decision of jurisdictional High Court, did not deduct tax at source on a particular amount, and subsequently, due to a retrospective amendment of law or a decision of the Supreme Court or a larger bench High Court, tax was held to be deductible or tax deducted was found to be less than the tax deductible on such amount.

#### Payments to non-residents

Default is on account of non-deduction or a lower deduction of tax in respect of payment made to non-residents<sup>8</sup> with whom India has entered into a Double Taxation Avoidance Agreement ('DTAA') and where:

- A dispute regarding the tax payable in India has been referred to the Competent Authority in India under Mutual Agreement Procedure as per the DTAA.
- Reference has been received by the Competent Authority in India within 2 years of the date on which the notice of demand determining the tax payable was received by the person in default.
- Dispute has been settled by way of a resolution arrived at under Mutual Agreement Procedure provided in the DTAA.
- Tax payer has accepted the resolution and has withdrawn the appeal pending on the issue, within a period of 1 month of the date on which the resolution is communicated to him.

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<sup>5</sup> under section 201(1A)(i) of the Income-tax Act, 1961

<sup>6</sup> under section 200A, section 201(1) or section 234E of the Income-tax Act, 1961

<sup>7</sup> under section 132 of the Income-tax Act, 1961

<sup>8</sup> under section 195 of the Income-tax Act, 1961

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## Contacts

### Deloitte Tohmatsu Tax Co.

#### India Practice

Hiroyuki Hayashi, Partner

[hiroyuki.hayashi@tohmatu.co.jp](mailto:hiroyuki.hayashi@tohmatu.co.jp)

Pawankumar Kulkarni, Manager

[pawankumar.kulkarni@tohmatu.co.jp](mailto:pawankumar.kulkarni@tohmatu.co.jp)

## Issued by

### Deloitte Tohmatsu Tax Co.

#### Tokyo Office

Shin-Tokyo Building 5F, 3-3-1 Marunouchi, Chiyodaku, Tokyo 100-8305, Japan

Tel : +81 3 6213 3800

email : [tax.cs@tohmatu.co.jp](mailto:tax.cs@tohmatu.co.jp)

Corporate Info. : [www.deloitte.com/jp/en/tax](http://www.deloitte.com/jp/en/tax)

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