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Global Tax Update

India

Deloitte Tohmatsu Tax Co.

July 2016

1. Rules notified[1] for relaxation from higher deduction of 20% on payments to non-residents not having PAN[2]

The existing provisions[3] of the Act[4] provide that where a recipient does not furnish PAN in India to the payer, then tax shall be deducted at 20% or a higher rate. Treaty rates are disregarded in this situation.

The Finance Act 2016 relaxed the above provisions with effect from 1 June 2016, for non-residents who does not have a PAN but satisfy such conditions as may be prescribed. Now, the CBDT[5] has issued a notification prescribing these conditions.

As per the notification, in case of a non-resident not having PAN, the higher withholding tax rate shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payment on transfer of any capital asset, if the non-resident furnishes the following details to the payer:

- Name, e-mail id, contact number of the non-resident
- Address in the country or specified territory outside India of which the recipient is a resident
- Tax residency certificate issued by the Government of that country or specified territory
- Tax Identification Number of the non-resident in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the non-resident is identified by the Government of that country or the specified territory of which he claims to be a resident

2. CBDT amends Income-tax Rules[6] clarifying the applicability of GAAR[7]

As per the CBDT notification, investments made prior to 1 April 2017 have been protected from the application of GAAR provisions. Earlier, investment made after 30 August 2010 were subject to GAAR provisions. Further, it has been clarified that GAAR provisions would apply to any arrangement

1 Notification No.53/2016, F.No. 370 142/16/2016-TPL], dated June 24, 2016
2 Permanent Account Number – Tax identification number in India allotted by Indian authorities to taxpayers
3 Section 206AA
4 Income Tax Act, 1961
5 Central Board of Direct Taxes
6 Income-tax Rules, 1962
7 General Anti Avoidance Rules

(irrespective of the date on which such arrangement has been entered into) in respect of which tax benefit has been obtained on or after the 1 April 2017. Earlier this date was 1 April 2015.

3. Changes in the FDI[8] Policy 2016[9]

The DIPP[10] recently issued FDI Policy 2016[11]. The Circular has been effective from 7.06.2016. One of the important changes was that the FDI in entities engaged in courier services is now permitted up to 100% under automatic route without any conditions.

4. Changes[12] in FDI Policy 2016

With the objective of providing major impetus to employment and job creation in India, the Government of India on 20.06.2016 announced several amendments in the FDI Policy 2016. The announcements are effective from 24.06.2016. Highlights of the amendments to the FDI Policy are summarized below:

Sl. no	Sector/ activity	Amendments
1.	Establishment of branch office, liaison office or project office	For establishment of branch office, liaison office or project office or any other place of business in India, if the principal business of the applicant is defense, telecom, private security or information and broadcasting, approval of RBI[13] would not be required in cases where FIPB[14] approval or license/permission by the concerned Ministry/Regulator has already been granted.
2.	Trading in food products manufactured/ produced in India	100% FDI under Government approval route is now permitted for trading, including through e-commerce, in respect of food products manufactured or produced in India.
3.	Single Brand Retail Trading (SBRT)	For FDI beyond 51% in SBRT which is under approval route, the mandatory local sourcing norms (i.e. 30% of the value of goods to be purchased from India, preferably from MSMEs[15], village and cottage industries, artisans and craftsmen in all sectors) will not be applicable up to 3 years from commencement of business, i.e. opening of the first store for entities undertaking SBRT of products having 'state-of-art' and 'cutting edge' technology and where local sourcing is not possible. Earlier for relaxation from local sourcing norms for any period, prior Government approval was required.
4.	Civil Aviation	Sectoral caps and entry routes for civil aviation are substantially liberalized as under: **Brownfield Airport Projects** FDI up to 100% now allowed under automatic route in Brownfield Airport Projects i.e. existing projects, as against erstwhile limit of up to 74% under automatic route and beyond 74% and up to

8 Foreign Direct Investment

9 Consolidated FDI Policy dated 7 June 2016 issued by the Government of India

10 Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India (GOI)

11 Consolidated Foreign Direct Investment Policy

12 Press Note No. 5 (2016 Series) dated 24 June 2016, (the Press Note)

13 Reserve Bank of India

14 Foreign Investment Promotion Board

15 Micro, Small and Medium Enterprises

		100% under Government approval route. **Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and Regional Air Transport Service** FDI limit of 49% now raised to 100%, subject to following: ➢ FDI up to 49% continues to be under automatic route; and ➢ FDI beyond 49% and up to 100% now allowed under Government approval route.
5.	Defence	FDI beyond 49% and up to 100% continues to be under Government approval route, in cases resulting in access to modern technology in the country or for other reasons to be recorded (new ground for approval added). Erstwhile condition of access to 'state-of-art' technology in the country has been done away with. FDI limit for defence sector (49% under automatic route and beyond 49% up to 100% under approval route) has also been made applicable to manufacturing of small arms and ammunitions covered under Arms Act, 1959.
6.	Pharmaceuticals For other conditions, please refer the Press note[16]	FDI up to 74% in brownfield pharmaceuticals would now be under automatic route and beyond 74% and up to 100% will continue to be under Government approval route, as against erstwhile requirement of 100% FDI under Government approval route for brownfield investment. Non-compete' clause would not be allowed under automatic or Government approval route except in special circumstances with the approval of the FIPB.

The amendments seek to further simplify the regulations governing FDI in the country and make India an attractive destination for foreign investors. It has pruned down the list of activities that requires government approval for FDI. Formal amendments to the FEMA Regulations giving effect to the above amendments are awaited.

16 Press Note No. 5 (2016 Series) dated 24 June 2016, (the Press Note)

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