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Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. Key updates on e-Business visa

With a view to support and facilitate business movements, e-business visa norms have been further relaxed. The new norms now provide for higher visa validity, continuous stay up to 180 days and multiple entry into India.

Key highlights were as under:

Heads	Particulars
Validity	■ Increased from 60 days to a maximum of one year ■ Continuous stay in India is permitted for a maximum period of 180 days ■ Stay stipulations and registrations under normal business visa would so be applicable to e-business visa (eg. no registration with the FRRO/FROs in India will be required if the stay is for a period of 180 days or less
Number of entities	■ e-business visa would be issued with multiple entry ■ Earlier restrictions on number of entries under e-business visa have been removed
Countries covered	■ Currently nationals of 166 countries are eligible for e-visa
Other chnages	■ e-business visa can be applied for multiple times as against earlier restriction of applying 3 times in a calendar year ■ Foreign nationals who fall sick during their stay in India are not required to convert their visa into medical visa for availing of medical treatment ■ Number of airports for entry into India for e-visa holders increased from 26 to 28 by including airports at Port Blair and Bhubaneshwar

2. Ministry of Commerce and Industry proposes relaxation of conditions for eligible start-ups to claim benefit[1]

As per the provisions of the Act[2], where a company in which the public is not substantially interested, receives any consideration for issue of shares exceeding the face value of shares, the aggregate consideration exceeding the fair market value of shares shall be taxable as an income under the head “Other Sources” in the hands of the recipient company.

Further, the aforesaid provision shall not be applicable in a case where the consideration for issue of shares is received by a company from a class or classes of persons, as may be notified by the central government.

In this regard, the Central Board of Direct taxes (CBDT)[3] issued time to time notifications providing that such

1 of proviso to Section 56(2)(viib) of Income Tax Act 1961 (the Act)

2 of Section 56(2)(viib) of the Act

3 vide powers conferred under Section 56(2)(viib) of the Act,

provisions shall not be applicable in case of issue of shares of an 'eligible start-up' company, wherein an eligible start-up means - An entity (registered as Pvt Ltd Co./ LLP/ Partnership firm in India) shall be considered to be a start-up for up to a period of seven years from the date of incorporation/registration. (In the case of start-ups in the biotechnology sector, the period shall be up to ten years from the date of its incorporation/ registration). - Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs. 25 crore. - Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

On February 19, 2019, it was announced that to provide relief to and boost investments into start-ups in India, the government has decided to widen the definition of 'start-up' and simplify the process of getting approval for exemption[4]. The key modifications are as under:

- An eligible entity shall now be considered to be a start-up for up to ten years from the date of incorporation/ registration as against the existing duration of seven years.
- An entity will also be considered a start-up if its turnover for any of the financial years since its incorporation or registration does not exceed Rs 100 crore as against the existing limit of Rs 25 crore.
- Consideration received by eligible start-ups for shares issued or proposed to be issued to all investors shall be exempt up to an aggregate limit of Rs 25 crore.
- The aggregate limit of Rs. 25 crore will exclude consideration received by eligible start-ups for the following classes of persons:
  - Non-Residents
  - Alternative Investment Funds- Category-I registered with SEBI
  - Listed company having a net worth of Rs. 100 crore or turnover of at least Rs. 250 crore provided that its shares are frequently traded as per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- In addition, consideration received by eligible start-ups for shares issued or proposed to be issued to a listed company having a net worth of Rs. 100 crore or turnover of at least Rs. 250 crore will be exempted.

It is also understood that the parties will have to file for registration/approval with the DPIIT[5] (successor to DIPP[6]) which will in-turn forward the application to the CBDT which is the registering authority, to issue a formal registration/approval. It is expected that detailed operational modalities will be notified by the CBDT in due course. Based on the current Ministry of Commerce press note it appears that this relaxation covers active private limited companies (only) and accordingly, clarity is required on status of other recognized entities such as LLP etc.

3. Significant Beneficial Ownership – Lifting of corporate veil!

The Ministry of Corporate Affairs (MCA) had in June 2018, notified amended section 90 of the Companies Act, 2013 (2013 Act), and also issued the Companies (Significant Beneficial Owners) Rules, 2018 (SBO Rules). However, implementation of the SBO Rules was kept on hold in view of the representations received from stakeholders.

MCA has now, on 8 February 2019, issued a draft notification amending the SBO Rules (Amendment Rules). With these Amendment Rules, the government has operationalised provisions of section 90 of the 2013 Act. Every SBO is required to make time-bound disclosures of their holding in the reporting company and any changes thereto. The objective is to identify the ultimate beneficial individual or group of individuals who have control or ownership of the reporting company disregarding the intermediate shareholding by non-individual persons.

This alert (link provided below) summarises rules for determination of SBO, declaration and disclosures, duty and power of the reporting company, penalties for non-compliance and exemptions from the SBO Rules.

https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Regulatory%20Alert/in-tax-ra-sbo-noexp.pdf

4 under Section 56(2)(viib) of the Act

5 Department for Promotion of Industry and Internal Trade

6 Department of Industrial Policy & Promotion

4. Goods and Service tax (GST) updates

(1) Recommendations for the Real Estate Sector:

Real estate sector is one of the largest contributors to India's national GDP and provides employment opportunity to large number of people. To boost the residential segment of the real estate sector, following recommendations were made by the GST Council in its 33rd meeting held on 24 February 2019:

GST rate:

- GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;
- GST shall be levied at effective GST of 1% without ITC on affordable housing properties.

Effective date: The new rate shall become applicable from 1st of April, 2019.

Definition of affordable housing shall be:- A residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value upto Rs. 45 lacs (both for metropolitan and non-metropolitan cities). Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)

GST exemption on Transferable Development Rights (TDR)/ Joint Develoment Agreement (JDA), long term lease (premium), Floor Space Index (FSI): Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable.

(2) Advance Ruling[7]

Ruling was sought for the following issues:

- Whether the promotion and marketing activities undertaken by the Appellant for the overseas Principal, are to be classified as 'intermediary services'?
- The appellant was arranging the contact between the Principal and the Principal's customer and the actual supply of the products was done by the Principal directly to the customer. It was held that, promotion and marketing of the products of the overseas client is in the nature of facilitating the supply of the products of the overseas client and needs to be classified as an 'intermediary service'.
- Whether the after-sales service provided under a composite contract would amount to a composite supply and if so what would be the principal supply?
- The Agency contract in question involved two taxable supplies of services i.e promotion and marketing service and after-sales support service. It was held that, since the two services were not bundled, the after sales support service, although rendered in a composite manner with the promotion and marketing service would not be a composite supply.
- Thus, the above services were held to be liable to GST and the matter was decided against the appellant.

7 IN RE: M/S. TOSHNIWAL BROTHERS (SR) PRIVATE LIMITED [2019 (2) TMI 126 - APPELLATE AUTHORITY FOR ADVANCE RULING, KARNATAKA]

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