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ARTICLES

EASE IN THE FOREIGN DIRECT INVESTMENT NORMS

The Government of India on the **24th of June, 2016** significantly reformed the Foreign Direct Investment (“**FDI**”) Policy by increasing the sectoral caps and integrating more activities under the automatic route, thus seeking to ease the process of FDI inflow and striving to facilitate economic growth and investment. Below are some of the key highlights:

SECTOR	ERSTWHILE POLICY	REFORMS
Civil/ Aviation	<ul style="list-style-type: none"> ▪ 49% FDI Automatic Route, Scheduled Air Transport Service/Domestic Scheduled Passenger Airline and 100% for NRIs. ▪ 49% Automatic Route for Non schedule Air transport services. ▪ 100% Automatic Route for Greenfield Projects and for Existing Projects up to 49% through Automatic Route and up to 74% Government Approval is required. 	<ul style="list-style-type: none"> ▪ 100% FDI is allowed in the Scheduled Air Transport. 49% shall be through the Automatic Route further investment shall be allowed through Government Route. ▪ 100% FDI allowed in case of NRI's ▪ 100% Automatic Route for Non schedule Air transport services. ▪ 100% FDI allowed, in case of development of airports for both Greenfield and Existing projects, through Automatic Route.
Pharmaceuticals	<ul style="list-style-type: none"> ▪ 100% Automatic Route in Greenfield Projects. ▪ 100% Government Route in Brownfield projects. 	<ul style="list-style-type: none"> ▪ 100% through the Automatic Route in Green field projects. ▪ 74% through the Automatic Route for Brown field projects. ▪ 100% Automatic Route is allowed in manufacturing of medical devices.
Defense	<ul style="list-style-type: none"> ▪ 49% FDI was permitted through the Government Route. ▪ Portfolio investment by FPIs/FII's/NRIs/QFIs and investments by FVCIs together will not exceed 24% of the total equity of the investment/joint venture company. 	<ul style="list-style-type: none"> ▪ 100% FDI is allowed, 49% is allowed through Automatic Route and further investment through Government Route.
Agriculture/ Animal Husbandry	<ul style="list-style-type: none"> ▪ 100% FDI Automatic Route in Agriculture and Animal husbandry sector, activities such as Horticulture; Floriculture; cultivation of vegetables; production of seeds; planting matter and Apiculture; breeding of Dogs, Pisciculture. ▪ 100% FDI Government Route in Tea sector, including tea plantations. 	<ul style="list-style-type: none"> ▪ 100% FDI in Agriculture and Animal husbandry sector, activities such as Horticulture; Floriculture; cultivation of vegetables; production of seeds; planting matter and Apiculture; breeding of Dogs, Pisciculture are allowed under the Automatic Route. ▪ In case of fresh foreign investment in a company (not seeking licensing from the sectoral ministry) that results in a change of ownership pattern or transfer of stake from the existing investors new foreign investors will require approval from the Foreign Investment Promotion Board (FIPB)

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HIGHLIGHTS OF THE FINANCE ACT, 2016

The Finance Act, 2016 was brought into force to give effect to the financial proposals of the Central Government for the financial year 2016-2017 and some of the major changes that came into effect are as below:

- Form 15G/15H also enabled for rental payments.
- Document required to be issued by an Income Tax Authority can be issued in paper form or communicated in electronic form.
- Equalization Levy @ 6% on online digital advertisement and incidental services or provision of digital advertising space.
- TCS @ 1% on luxury vehicles and cash sale of goods or provision of services.
- Jurisdiction of Assessing Officer not to be questioned in search cases after one month from notice u/s 153A.
- Non Corporate assessee is also liable to pay advance tax, 15% by 15th June, 45% by 15th September, 75% by 15th December and 100% by 15th March, in case of Presumptive Income, 100% advance tax to be paid by 15th March.
- Application for Waiver of Interest u/s 220(2A) to be disposed off within one year.
- Interest under Section 234C shall not be chargeable in case of an assessee having income under the head "Profits and gains of business or profession" for the first time.
- Interest on Refund for timely filed return to be allowed from 1st April but interest on refund for belated return to be allowed from date of furnishing of return. Interest on refund of self assessment tax to be allowed from date of filing of return or payment of tax, whichever is later. Interest would not be allowed if refund is lesser than 10% of determined tax.
- Electronic Hearing under Income Tax law enabled. In ITAT, post of Senior Vice President abolished. And rectification period of ITAT orders has been reduced from 4 years to 6 months. Also monetary limit for hearing of appeal by Single Member Bench (SMC) in ITAT has been raised from 15 Lacs to 50 Lacs, u/s 255(3).
- Time limit for completion of assessments has been modified and reduced from 24 months to 21 months. All assessments are to be completed by 31st December.
- Non-resident not having PAN shall not be subjected to 20% TDS.
- Monetary Limit for TDS on Winnings from Horse Races u/s 194BB has been enhanced from Rs. 5,000/- to Rs. 10,000/-.
- Aggregate Annual Limit for TDS on payment to Contractors u/s 194C has been increased from Rs. 75,000/- to Rs 1,00,000/-.
- Monetary Limit for TDS on Insurance Commission u/s 194D has been reduced from Rs. 20,000/- to Rs. 15,000/-.
- Monetary Limit for TDS on Commission u/s 194H has been enhanced from Rs. 5000/- to Rs. 15000/- and the rate has been reduced from 10% to 5%, to bring parity with Insurance Commission.
- Monetary Limit for TDS on Commission on Sale of Lottery Tickets u/s 194G has been enhanced from Rs. 1,000/- to Rs. 15,000/- and the rate has been reduced from 10% to 5% to bring parity with Insurance Commission and Commission on Brokerage.
- TDS rate on withdrawal of NSS Deposits u/s 194EE has been reduced from 20% to 10%.
- TDS on LIC Maturities u/s 10(10D) exceeding Rs. 1,00,000/- was charged @ 2% by Finance Act 2014 w.e.f. 01-10-2014, which has now been lowered to 1%.
- TDS @ 10% to be charged for compulsory acquisition of immovable property other than agriculture land where the limit for the aggregate payments during the financial year has been modified from Rs. 2,00,000/- to Rs 2,50,000/-.

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SNIPPETS OF OTHER KEY LEGAL UPDATES

Business Entities' engaging Senior Advocates to pay Service Tax: The Central Government *vide* Notification dated 6th June 2016 has amended the position of Senior Advocates under Service Tax. 'Representational services' tendered by a Senior Advocate, whether directly or indirectly to a business entity, will be chargeable to Service Tax, payable by the litigant. However, the same will only be payable when the recipient of said services is a business entity with a turnover of Rs. 10 lakhs and greater.

NCLT and NCLAT notified as constituted: The Ministry of Corporate Affairs *vide* a series of Notifications dated 1st June, 2016 has established the National Company Law Tribunal and the National Company Law Appellate Tribunal and has ordered for transfer of matters or proceedings or cases pending before the Company Law Board to National Company Law Tribunal.

Indian startup, having an overseas subsidiary, allowed to open a foreign currency account with a bank outside India: The RBI *vide* a Notification dated 23rd June, 2016 has decided to permit an Indian startup, having an overseas subsidiary, to open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/sales made by the said startup or its overseas subsidiary. Further, payments received in foreign exchange by an Indian startup arising out of sales/ export made by the startup or its overseas subsidiaries is to be a permissible credit to the Exchange Earners Foreign Currency (EEFC) account maintained in India by the startup.

Modified/Clarified norms relating to the issuance and transfer of ODIs published: The SEBI *vide* a Circular dated 10th June, 2016 has published clarifications with respect to KYC norms for ODI subscribers and mandated ODI issuers to make available to SEBI on demand, details of all transfers of the ODIs issued by them. ODI issuers have also been asked to file suspicious transaction reports and carry out a periodical review and evaluation of its controls, systems and procedures with respect to the ODIs. A revised ODI reporting format has also been published.

Companies (Acceptance of Deposit) Amendment Rules, 2016 (29th June 2016) amended: The Ministry of Corporate Affairs has brought in a few changes by way of the Amendment Rules, 2016; namely:

- The existing List of "Deposits" as per Rule 2(1)(c) has been expanded;
- In sub clause (ix) Rule 2(1)(c) earlier compulsory convertible bonds or debentures convertible within a period of five years were included in the list of exempt deposits, now the threshold limit has been raised up to ten years. In sub-clause (xi), Rule 2 (1) (c) Non-interest bearing amount held in trust is exempt from the ambit of 'Deposits';
- As per sub-rule (3) of Rule 3, acceptance or renewal of deposits in case of Public Company has been increased to 35% from the earlier 25% limit;
- Private Companies can accept deposits of 100% of the (Aggregate of the paid up share capital, free reserves and securities premium account);
- The advertisement inviting deposits has to be posted on the Company's website; and
- Rule 16 A Disclosures in the Financial Statements, shall be made by the Private Company about the money received from the Directors and their relatives. In case of Public Companies, money received from their Director.

CONTACT INFORMATION

To reach any of our offices:

Ahmedabad | Shivalik High Street | +91 79 4800 0060
 Bangalore | Ulsoor Road | +91 80 6761 6000
 Chandigarh | Panchkula | +91 98 1121 3234
 Chennai | Nungumbakkam | +91 44 42187857
 Delhi | East of Kailash | +91 11 4658 1691
 Mumbai | Mahalaxmi | +91 22 4004 6647

For any queries or discussion on this Edition please contact
 Aayush Modi at: aayushmodi@universal-legal.com

KEY CONTRIBUTORS

Ms. Soumya Kapoor | Ms. Priyanka Patwa | Mr. Jeet Patel | Mr.
 Aditya Mehta | Mr. Aayush Modi

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