

Highlights

- Compulsory scrutiny limit in transfer pricing deals raised to INR 15 crore.
- RBI nixes upfront disbursal of housing loans.
- Govt. moves to ease entry of foreign universities in India.
- Non-residents can now access Indian stock exchanges under FDI Scheme.
- SEBI updates KYC norms for foreign investors.
- GAAR rules notified; to be implemented from April 2016.
- Provisions under Companies Act, 2013 notified.
- RBI clarifies revised Overseas Direct Investment Guidelines.

Corporate Brief

➤ *Compulsory scrutiny limit in transfer pricing deals raised to INR 15 crore.*

The Central Board of Direct Taxes has raised the scrutiny relaxation limit on transfer pricing deals from INR 5 crore to INR 15 crore. Determination of the correct arm's length price is done by the Transfer Pricing Officer. Till recently only where the aggregate value of the international transaction exceeded INR 5 crore, the same was scrutinised by the Transfer Pricing Officer. However, given the large number of international transactions that exceed the INR 5 crore threshold, it became necessary to raise the limit.

Arm's length pricing is meant to ensure that international transactions between two associated enterprises are conducted at an arm's length price so that the two countries may get a proper share of tax revenues. Determination of what constitutes the proper arm's length price requires the inputs of relevant specialists. In India, a large number of transactions at arm's length are subject to adjustments in terms of Section 92C of the Income Tax Act, 1961 which provides for such adjustments in the transfer price of an international transaction with an associated enterprise if the transfer price is not equal to arm's length price.

Under the aforementioned instructions the cases/ returns which shall be compulsorily scrutinised are: (i) cases where the value of international transaction exceeds INR 15 crore; and (ii) cases involving addition in an earlier assessment year on the issue of transfer pricing in excess of INR 10 crore which is confirmed in appeal or is pending before an appellate authority.

[See CBDT Instruction no. 10/2013 dated 05.08.2013]

➤ *RBI nixes upfront disbursal of housing loans.*

The Reserve Bank of India has indicated that banks have introduced certain housing loan schemes involving upfront disbursal of sanctioned individual loans to builders without linking such disbursal to the various stages of construction of the housing project.

The interest/ EMI on the housing loans availed by the individual borrowers are serviced by the builders/ developers during the construction period.

The Reserve Bank of India has observed that such housing loans are likely to expose banks and borrowers to additional risks of disputes, delayed interest payments, lower credit ratings, etc. It has further observed that where bank loans are disbursed upfront on behalf of the individual borrowers in lump-sum, without linking it to stages of construction, banks run disproportionately higher exposures with concomitant risks of diversion of funds.

In view of such risks, the Reserve Bank of India has advised Primary (Urban) Co-operative Banks to closely link disbursal of housing loans sanctioned to individuals to the stages of construction of the housing project. The Reserve Bank has also advised that upfront disbursal should not be made in cases of incomplete/ under-construction/ green field housing projects.

[See UBD CO BPD (PCB) Cir. No. 17/09/22.010/2013-14 issued by RBI.]

➤ *Govt. moves to ease entry of foreign universities in India.*

Currently, foreign universities in India are required to partner with a local education provider, and the courses and degrees issued are not considered foreign degrees. However, soon foreign universities will be able to operate as non-profit companies, and would not require a local partner. The HRD Ministry is soon expected to allow foreign universities to set up campuses in India and award foreign degrees. Under the new rules proposed by the HRD Ministry, foreign universities can set up campuses in India once they have been notified as 'foreign education provider' by the University Grants Commission. Such educational institution shall have to be in the top 400 rankings in three global educational rankings viz. (i) Times Higher Education Ranking, (ii) Quacquarelli Symonds Ranking, and (iii) Shanghai Jiao Tong University Rankings.

The Foreign Universities in India will function under the University Grants Commission Rules, and the degrees awarded by such foreign universities in India will be considered foreign degrees and students holding such degrees shall need to obtain an equivalence certificate from the Association of Indian Universities.

➤ *Non-residents can now access Indian stock exchanges under FDI Scheme.*

Currently, Foreign Institutional Investors, Qualified Foreign Investors, and Non-Resident Indians are eligible to acquire shares on recognised stock exchanges. A non-resident is however not permitted to acquire shares on stock exchanges under the FDI Scheme. The Reserve Bank of India has allowed non-residents, including non-resident Indians to acquire shares of a listed company on a stock exchange under the FDI Scheme. Non-resident investors are required to abide by the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and the investments should be in line with the extant FDI Policy in respect of sectoral caps, entry route, reporting requirements, documentations etc.

The amount of consideration for the transfer of shares to non-residents consequent to purchase on the stock exchange can be (i) by way of inward remittance through normal banking channels, or (ii) by way of debit to the NRE/FCNR account of the person concerned, or (iii) by debit to non-interest bearing Escrow account maintained in India, or (iv) be paid out of the dividend payable by the Indian investee company in which the non-resident holds shares.

[See A.P. (DIR Series) Circular No. 38 dated 06.09.2013 issued by RBI.]

➤ SEBI updates KYC norms for foreign investors.

The Securities and Exchange Board of India has issued further clarifications with regards to Know-Your-Client requirements applicable for foreign investors. Eligible foreign investors investing under the Portfolio Investment Scheme are now classified into three categories (i) Foreign central banks, governmental agencies, sovereign wealth funds, international/ multilateral organisations/ agencies, (ii) Mutual funds, investment trusts, reinsurance companies, banks, asset management companies, investment/ portfolio managers, university funds/ endowments, pension funds, and FIIs and sub-accounts, and (iii) all other eligible foreign investors. The updates provide for a list of required documents/ details required of the entity, its senior management, authorised signatories, and ultimate beneficial owners. The details would be utilised by the intermediary for conducting risk-based KYC norms.

[See SEBI Circular CIR/MIRSD/07/2013 dated 12.09.2013]

➤ GAAR rules notified; to be implemented from April 2016.

The Central Board of Direct Taxes has notified the applicability of General Anti-Avoidance Rules ("GAAR") which shall take effect from 01.04.2016. The GAAR provisions were first introduced in the 2012-2013 Union Budget. The notified rules have been framed in order to check tax avoidance, and relate to Foreign Institutional Investors ("FII") who have invested in Indian entities/ schemes.

Under Rule 10U of the Income Tax Rules, 1962, the GAAR provisions will not apply to an arrangement where the tax benefit under an arrangement does not exceed a sum of INR 3 crore. Also, Rule 10U will not be applicable to such FIIs (i) who are assessees under the Income Tax Act, 1961, (ii) who have not taken the benefit of Double Taxation Avoidance Agreements under Section 90 and 90A of the Income Tax Act, 1961, or (iii) who have invested in listed or unlisted securities with prior government permission.

Rule 10U is also not applicable to a non-resident person on investments made through offshore derivative instruments in FIIs. Transactions preceding 30.08.2010 are also excluded from the purview of GAAR. In respect of determination of consequences of impermissible avoidance agreements, the Rules provide that where a part of an arrangement is declared to be an impermissible avoidance arrangement, the consequences in relation to tax shall be determined with reference to such part only.

➤ Provisions under Companies Act, 2013 notified.

The Ministry of Corporate Affairs has notified 98 out of 470 sections of the Companies Act, 2013 for implementation effective 12.09.2013. The relevant provisions of the erstwhile Companies Act, 1956 which correspond to the sections notified shall cease to have effect from 12.09.2013. The Registrar of Companies have been directed to register those Memorandum and Articles of Association received till 11.09.2013 as per the definition clause of 'private company' under the erstwhile Company Act 1956. The Ministry of Corporate Affairs has also clarified that companies that have issued notices of general meeting on or after 12.09.2013 shall have to comply with the additional requirements of Section 102 of the erstwhile Companies Act 1956 in their notices. Furthermore, the existing accounting standards notified under the Companies Act 1956 shall continue to apply till any addendum thereto is prescribed by the Central Government.

Additionally, the Ministry of Corporate Affairs has also published the first and second tranches of Draft Rules on 25 chapters of the Companies Act, 2013 on its website for comments/ suggestions from the general public.

[See General Circular No. 15/2013 and 16/2013 read with MCA Notification dated 12.09.2013]

➤ RBI clarifies revised Overseas Direct Investment Guidelines.

The Reserve Bank of India had announced the revised guidelines for overseas direct investment by Indian entities on 14.08.2013, whereby it had lowered the limit on overseas investment that could be made by Indian entities from 400% of their net worth to 100%. On 04.09.2013 the Reserve Bank of India has issued a press release (2013-2014/483) whereby it has clarified that the measure had been taken in the context of current macro-economic situation, and that it was not the intention of the Reserve Bank of India to restrict bona-fide and genuine overseas direct investment transactions by Indian companies. Pursuant thereto the Reserve Bank of India has clarified that in respect of funding of overseas direct investments by way of External Commercial Borrowings, instead of the limit of 100% of the net worth, the earlier limit of 400% of the net worth will continue to apply, till further revision.

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