FDI in India
Policy Update December 2009

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I. Introduction

India's share in world FDI shot up from 0.78 per cent in 2005 to 2.45 per cent in 2008 indicating that the Indian economy is gaining the foreign investor's confidence. India, along with China, U.S., Brazil and Russia, figured in the top-five most attractive locations for FDI for 2009-11 in the World Investment Report 2009.

Further, the 2009 survey of the Japan Bank for International Cooperation, conducted among Japanese investors, continues to rank India as the second promising country for overseas business operations after China. India is committed for further simplification of the FDI policy framework to make it more comprehensive and attractive for all investors and stakeholders.

II. Expected changes in FDI rules

The following changes in FDI rules are expected in the near future:

(i) Foreign investors can get exemption from the FIPB nod for converting warrants into shares

Government is planning to give exemption to foreign investor from FIPB approval for converting the warrants issued to them into underlying shares in sectors that do not have limits on FDI.

Warrants are instruments that entitle their holders to rights for acquiring a specific number of financial securities, such as shares in a company on a specific date at a pre-agreed price.

Though the current FDI policy does not explicitly state that companies require clearance from the FIPB for the conversion of warrants into shares, a provision in the Foreign Exchange Management Act (FEMA) makes it imperative for companies to seek a clearance.

http://economictimes.indiatimes.com/markets/stocks/market-news/Foreign-investors-may-not-need-FIPB-nod-for-converting-warrants/articleshow/5345845.cms

(ii) Government to monitor FDI end-use in realty

The government has set up a monitoring cell to investigate the end-use of foreign funds raised by realty firms. The purpose is to ascertain whether companies have diverted money to areas in which FDI is banned -- for example, the purchase of agricultural land.

The decision comes with investigations by government agencies revealing large scale FDI violations in purchase of land by real estate developers.

Under current regulation FDI is banned in agriculture and agriculture related activities. The apprehension is that certain developers could be using funds raised through FDI to buy agricultural land for illegally developing integrated townships and housing projects.

http://www.financialexpress.com/news/dipp-to-scan-fdi-enduse-in-realty/555578/

(iii) Government may stub out FDI in tobacco

The government has decided to ban FDI in tobacco, thus barring international tobacco firms from entering the Indian market. The decision to ban FDI has brought an end to long running lobbying from domestic and foreign players. The health ministry has been opposing FDI in tobacco while international players have been of the opinion that protectionism is an ineffective tool for addressing public health objectives and would only entrench existing players.

India's branded cigarette market is worth around Rs 17,000 crore annually and growing at 8-10% a year. Cigarettes account for less than a fifth of the tobacco consumed in the country.

http://economictimes.indiatimes.com/news/economy/policy/Govt-may-stub-out-FDI-in-tobacco/articleshow/5363815.cms

(iv) Government plans to revise tax treaties

To trace black money, the government is planning a comprehensive revision of tax treaties with 25 nations, including Switzerland, Malaysia, Norway and Mauritius, and renegotiation with 51 other countries.

Treaties with countries such as Australia, China, France and Germany may be reworked by the government and cast into double taxation avoidance agreements (DTAA). This would help to get information on those who have stashed wealth in the banks of these countries which are mostly low-tax or no-tax nations (tax havens).

http://economictimes.indiatimes.com/news/economy/finance/Govt-mulls-tax-treaty-review-with-76-nations/articleshow/5307880.cms

III. News & Views:

(i) OECD asks India to smoothen FDI Road

The OECD has argued for further easing of restrictions on foreign investment flow into India in areas such as banking, insurance and retail distribution where productivity levels are low and greater foreign investment could help raise incomes.

In its first investment policy review of India, OECD confirms that India has greatly improved its regulatory investment environment over the past decades. But OECD has suggested that the judicial process for sorting out corporate disputes should be faster.

The review stressed on the need to expedite the judicial process in the country pointing out that for investors, significant delays in justice can mean bankruptcy. Strengthening the capacity of the judicial system could make a big difference to investment.

OECD has also warned that frequent changes in India's FDI policy could act as a deterrent for overseas investors.

http://economictimes.indiatimes.com/news/economy/finance/OECD-calls-for-wider-FDI-road/articleshow/5302316.cms

(ii) FDI policy review appreciated

The government's initiative to unite all the Acts, rules and press notes into a single policy document along with the newly systemized review of the draft compendium on investment policy has been appreciated.

Foreign investors have sought for constancy in the policy regime so that committing funds to the economy becomes free of risk. However, the failure of the policy to define 'beneficial ownership', which is critical for deciding the level of control an investor may exercise while investing in a local firm, needs to be remedied.

It is being argued that indirect holdings should also be considered along with direct ownership in quantifying beneficial ownership.This measure can facilitate clear cut restrictions in FDI in select sectors. .

http://mobileet.timesofindia.com/mobile.aspx?article=yes&pageid=14&sectid=edid=&edlabel=ETBG&mydateHid=25-12-2009&pubname=Economic+Times+-+Bangalore&edname=&articleid=Ar01405&publabel=ET

(iii) French companies are keen to invest in India

A recent report 'Capitalizing the India opportunity: Helping French companies achieve business in India' mentions that French firms are willing to invest around € 10 billion in 2007-12 in diverse sectors as India's promise as a market for them has been increasing over time.

France is currently among the top 10 investors in India with FDI investment of $467 million during 2008-09.

Indian consumer spending is anticipated to reach around €1 trillion by 2025 while the manufacturing industry is conjectured to value €125 billion in the next 5 years. Also, the infrastructure sector has been acknowledged as the focus area for the Indian government and is expected to attract an investment of €14 billion in the next 2 years.

The sectors covered by the report include aerospace and defence, automotive, retail and consumer products, life sciences, energy and utilities. Leading French entities investing in India are Accor, Alcatel-Lucent, Alstom, Danone, LVMH Group, EADS, and Areva T&D among others.

http://www.thehindubusinessline.com/2009/12/26/stories/2009122650880200.htm

(iv) Foreign equity minuscule in public-private projects

The foreign equity component, involving 27 overseas entities, is a meagre one per cent of total public –private project investment. This is despite the Centre allowing 100 per cent FDI in infrastructure projects while facilitating funding of these projects and providing fiscal incentives.

61 percent (Rs 1,053.13 crore) of PPP investments has been made in four airport projects, 24 per cent (Rs 416.5 crore) allotted to nine port projects, and the rest 15 per cent (Rs 256.22 crore) to nine road projects.

Given that Indian entities invest in PPPs via Special Purpose Vehicles (SPV), the entire investment is apparently made by Indian investors though their holdings are backed by foreign equity.

http://www.blonnet.com/2009/12/25/stories/2009122553300100.htm

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