Workshop Minutes – Doing Business in India

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DOING BUSINESS IN INDIA

I INTRODUCTION TO FDI STRATEGIES

1.1 ENTRY STRATEGY – FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

- Foreign Companies/ Indian Companies Having Foreign Ownership Are Restricted To Conduct Business In Certain Sectors Under FEMA.

- Automatic Route : As Per Annexure II

- Restricted/ Negative List :

  - Agricultural Or Plantation Activities
  - Real Estate Trading Or Construction Of Farm Houses
    (Real Estate Business In Development Of Townships/ Large Projects Subject To Size And Investment **Permitted**)
  - Multi Brand Retail
  - Gambling, Lottery
  - Atomic Energy
  - Petroleum Sector
  - Print & Broadcasting Media

1.2 POSSIBLE STRUCTURES

- Liaison Office- Necessary Permissions Required Under Foreign Exchange Management Act, 1999 Prior To Setting Up.
- Branch Office- Necessary Permissions Required Under Foreign Exchange Management Act, 1999 Prior To Setting Up.
- Domestic Companies- Compliances Required At The Time Of Funding Under Automatic Route.
- Corporates Governed By Indian Companies Act, 1956 and Rules thereunder.
- Legislation for Conducting Business as Limited Liability Partnerships, pending approval with Parliament.

II INTRODUCTION TO BASIC TAXATION

2.1 TAX RATES

- Income Of Foreign Companies Taxed @ 44 % (Incl. Surcharge)
- Income Of Domestic Companies Taxed @ 34% (Incl. Surcharge)
- Dividend Distributed Subject To Tax @ 17% (Incl. Surcharge)
- Minimum Alternate Tax **(MAT)** Levied @ 12% of Book Profits in case the tax on assessable income is less than the tax on Book Profit.
- Capital Gain Tax Chargeable On Profit On Sale Of Long Term Assets @ 22%

2.2 FISCAL INCENTIVES

- **SECTION 10A/10B OF INCOME TAX ACT, 1956**

  These Sections provide Special Incentives in the form of Exemption of Profits from Tax to Free Trade Zones, Electronic Hardware Technology Parks, Software Technology Park, Special Economic Zones, 100% Export Oriented Units.

SECTION 80IA/IB/ IC

These sections provide exemption in respect of profits derived from the business of infrastructure development and setting up of industrial undertakings in certain backward areas, including Himachal Pradesh, Uttaranchal, North Eastern States

2.3 TRANSFER PRICING

- Income arising from international transactions undertaken between two or more associated enterprises are computed having regard to arms length price under the Income Tax Act, 1956.

- Arms Length Price Methodology
  - Comparable Uncontrolled Price Method
  - Resale Price Method
  - Cost Plus Method
  - Profit Split Method
  - Transactional Net Margin Method

- Difficulty in obtaining comparable pricing details, consequent subjectivity leads to litigation.

2.4 INDIRECT TAX

- Value Added Tax- a state subject, therefore rate varies from state to state within the range of 4% to 12.5%.
- Central VAT on manufacture of goods @ 16.32%
- Service Tax on rendering of specified services @ 12.24%
- Credit available against Cenvat/ Service Tax paid on inputs/ input services availed.
- A composite tax namely, GST on the anvil as presently applicable in Canada.

III OVERVIEW OF BOOMING SECTORS

3.1 REAL ESTATE

- 100% FDI under automatic route subject to conditions
- Minimum 10 hectares (25 acres) land area to be developed in case of housing plots.
- Minimum 50,000 sq. Mtrs. Built up area to be developed in case of construction–development projects.

- Minimum capitalization of US$10 million for wholly owned subsidiaries and US$ 5 million for joint ventures with Indian Partners
- Development of at least 50% project within five years of obtaining all statutory clearances.

3.2 HOSPITALITY

- 100% FDI permitted under the automatic route
- Fiscal incentives available u/s 80ID wherein
  - 100% tax holiday is available for 5 consecutive years provided hotel becomes operational before 31.03.2010 and is located in Delhi and peripheral areas, commonly known as National Capital Region (NCR)
- Imports for setting up and running of Hotels is exempt from Custom duty subject to fulfillment of minimum foreign exchange earning requirements within a stipulated time period

3.3 RETAIL

- FDI upto 51% allowed with prior government approval
- Products to be sold should be of a single brand only.
- Products to be sold under same brand internationally.
- Single brand product retailing to cover products which are branded during manufacturing.
- Fresh approval required for any addition to the product categories to be sold under single brand.

3.4 TELECOMMUNICATIONS

- FDI upto 49% under the automatic route.
- Foreign investment promotion board's approval required for FDI beyond 49% upto 74%, the maximum permissible limit..
- Majority directors on the board including chairman, managing director and chief executive officer to be resident Indian citizens.
- Shareholders agreements to specifically incorporate the condition regarding the nationality of the directors being Indian citizens.