LEXCOUNSEL
LAW OFFICES

February 21, 2012 New Delhi, India

LexCounsel, Law Offices

C-10, Gulmohar Park
New Delhi 110 049, INDIA.

Tel.:+91.11.4166.2861
Fax:+91.11.4166.2862

New Rule for Furnishing of Annual Statement by a Liaison Office

In terms of Section 285 of the Income Tax Act, 1961, every non-resident who has a liaison office in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 is obliged to prepare and deliver or cause to be delivered, a statement in respect of its activities in a financial year ("Annual Statement") within sixty (60) days from the end of such financial year in the form and containing such particulars as may be prescribed. The Central Board of Direct Taxes ("CBDT") has on February 6, 2012 prescribed such form and procedure to file the Annual Statement.

The CBDT has inserted a new Rule 114DA ("said rule") in the Income Tax Rules, 1962 whereby the Annual Statement must be furnished in the newly prescribed Form No. 49C. The said rule also stipulates the following conditions for purposes of filing the Annual Statement:

1. The Annual Statement must be duly verified by an Authorized Signatory who may either be a Chartered Accountant or a person authorized in this behalf by the non-resident; and

2. The Annual Statement must be furnished in electronic form along with digital signature.

The Director General of Income Tax (Systems) shall specify the procedure for filing of the Annual Statement and be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to statements so supplied.

Apart from the general information required to be disclosed in such cases, Form No. 49C also requires information about, inter alia, India specific financial details for the financial year of the non-resident person, details of purchases, sales of materials and services to Indian parties during the year by the non-resident apart from the transactions made by the liaison office, number of employees working in the liaison office and details of any salary or compensation of any sort payable outside India to any employee working in India or providing services in India, details of products and services for which liaisoning activities are done and details of any other entity for which liaisoning activity is carried out.

Indian Aviation Industry in High Spirits

Excessive lobbying by major domestic carriers like Kingfisher Airlines and GoAir urging the Government of India to allow Foreign Direct Investment ("FDI") by foreign airlines has finally borne fruit. The Ministry of Civil Aviation has reportedly forwarded its recommendations to the Department of Industrial Promotion and Policy, Ministry of Commerce, Government of India ("DIPP") which is in the process of formulating a Cabinet note allowing upto 49% FDI in domestic airlines by foreign airlines via the Foreign Investment Promotion Board ("FIPB") approval route.

The present FDI Policy permits foreign investors, other than foreign airlines and NRIs, to invest upto 49% in the domestic airlines under the automatic route. Foreign airlines are permitted to invest in cargo airlines, helicopters and seaplane services upto 74% (upto 49% under the automatic route and upto 74% with prior approval). NRIs are however permitted to invest upto 100% in domestic airlines, cargo airlines, helicopters and seaplane services.

Although the Government has agreed to consider permitting foreign airlines invest in India, the Government still has concerns regarding national security and has therefore, proposed that the foreign airlines will need prior clearance from the security committee of the Home Ministry in addition to the FIPB approval. The Government's main security concerns, it appears, linger around the ground handling services and therefore, stringent terms and conditions may be imposed in this regard. Consequently, the security clearance as well is most likely to be associated with ground handling services which include, inter alia, check-in, baggage handling, cargo handling, aircraft cleaning, loading and unloading of food & beverages on aircraft, providing back-up electricity to aircrafts while they are at the airports, and ferrying passengers to and fro from the aircrafts.

Furthermore, the Ministry of Civil Aviation has also sent out a letter on February 15, 2012 to the Ministry of Commerce requesting it to take steps to allow direct import of Air Turbine Fuel ("ATF") by domestic carriers in pursuance to the decision taken by the Group of Ministers on Civil Aviation in their meeting of February 7, 2012. The Minister of Civil Aviation has also simultaneously urged the Chief Ministers of all states to reduce the sales tax on ATF, which varies from 4% to 30% as of date but did not get favourable response in most cases. The move has come in light of the fact that ATF prices in India are 30% to 40% more than the prices in international market due to higher base price as well as taxes. Interestingly, while the revenue to the Government generated from the sales tax on ATF ranges from 0.5% to 2%, for the airlines it forms almost 40% of their operational costs.

The Government, it appears is frantically endeavouring to rescue the country's aviation industry from its excessive cash deficit and inefficient restructuring. In any case, both the above moves by the Government have been warmly welcomed by the industry.

Investment Friendship with Pakistan

DIPP has sent a proposal to the Ministry of Finance, on February 16, 2012, to relax the current FDI norms to allow FDI from Pakistan. In terms of the present FDI norms, a non-resident entity other than a citizen of Pakistan or an entity incorporated in Pakistan can invest in India. Pakistan is the only country expressly debarred from investing into India. An individual or an entity incorporated in Bangladesh can invest only under the FIPB approval route. Although Pakistan allows FDI from India, the Government of India has always had security concerns in reciprocating Pakistan's stance.

The proposal is at infancy level as of now and is undergoing a lot of deliberations between the various government departments. At subsequent stages, talks will commence between the India-Pakistan CEO's Forum with government representation to take it forward and decide on the sectors where the investments may be allowed and the sectoral caps thereof.

Although FDI may be allowed from Pakistan, with concerns of national security still lingering, the Government would most likely avoid investments under the automatic route, that is, the FDI shall be routed through the FIPB approval route.