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May 12, 2011 New Delhi, India

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FDI Permitted In LLPs

The Cabinet Committee on Economic Affairs, Government of India ("GoI") on Wednesday, May 11, 2011 permitted Foreign Direct Investment ("FDI") in Limited Liability Partnerships ("LLPs"). The GoI had expressed that FDI in LLPs will be implemented in a calibrated manner, starting with the sectors where GoI monitoring was not required.

Accordingly, to begin with FDI has been permitted in LLPs operating in the sectors in which FDI Policy of the GoI already allows 100% FDI through automatic route without any FDI-linked performance related conditions. As an additional caution, the FDI in such LLPs would still require prior approval of the GoI.

At this stage, FDI is ruled out for LLPs engaged in agricultural or plantation activity, print media or real estate businesses. Also, LLPs with FDI are not allowed to make any downstream investments.

The GoI has prescribed additional conditions to govern funding, ownership and management of the LLPs with FDI, inter alia, the following:

a. An Indian company, having FDI, is allowed to make downstream investment in LLPs only if such company as well as the LLP are engaged in sectors where 100% FDI, through automatic route, is permitted without any FDI-linked performance related conditions;

b. Foreign investment in LLPs is allowed only by way of cash considerations, received through inward remittance, through normal banking channels or by debit to Non-Resident External Rupee Account or Foreign Currency (Non Resident) Account of the investor;

c. Foreign Institutional Investors and Foreign Venture Capital Investors are not permitted to invest in LLPs;

d. LLPs are not permitted to avail the External Commercial Borrowings;

e. Amongst the corporate entities, only a company registered under the Companies Act, 1956 is permitted to be a designated partner (i.e. partner responsible for compliance) in an LLP with FDI; and

f. A company with FDI may convert into an LLP with prior approval of the GoI and only if the aforesaid stipulations are complied with.

Service Tax Applicable to Sub-Contracts in Infrastructure Sector

The Central Board of Excise and Customs ("CBEC") has recently clarified that sub-contractors are essentially taxable service providers, even if the services of the principal contractor are exempt from service tax.

The observation was made while considering taxability of services such as Architect's Services, Consulting Engineer's Services, Construction of Complex Services, Design Services, Erection Commissioning or Installation Services and Management, Maintenance or Repair Services rendered by sub-contrac-

tors to principal contractors with respect to construction of dams, tunnels, roads, bridges, etc. Presently, the Works Contract Service ("WCS") with respect to construction of dams, tunnels, roads, bridges, etc., is per se exempt from levy of service tax. The principal contractors however engage sub-contractors for the aforesaid specific services in relation to construction of dams, tunnels, roads, bridges, etc.

WCS providers claimed that the services provided by the sub-contractors are in relation to the exempted services and thus made a representation seeking extension of benefit of such exemption on WCS to such sub-contractors providing various services to the WCS providers.

The CBEC has now issued a circular clarifying that the services provided by the sub-contractors, consultants and other service providers to the WCS providers were distinctly classifiable under the respective sub-clauses of section 65(105) of the Finance Act, 1994, by their description and are thus chargeable with service tax.

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