Economy

Press Note 4 of 2019: Will relaxing rules end up boosting FDI?

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- The clarification introduced in the manufacturing sector is expected to give the necessary impetus to the 'Make in India' drive of the government.
- Similarly, permitting FDI in the companies engaged in the business of sale of coal and coal mining activities would help in establishing an effective coal market in the country.

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The Department for Promotion of Industry and Internal Trade (DPIIT) on September 18, 2019, notified Press Note 4 of 2019 (PN 4 of 2019) to give effect to the government's directive to liberalise foreign direct investment (FDI) norms in the sectors of: (a) coal mining; (b) contract manufacturing; (c) single-brand retail trading (SBRT); and (d) digital media.

The amendments proposed by PN 4 of 2019 are currently only policy announcements and would only become effective upon notification of corresponding amendments to the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017.

What are the key changes introduced via the note?

In line with the proposals made by the Union Minister of Finance and Corporate Affairs in the Union Budget 2019-20, the vital changes introduced by PN 4 of 2019 are as follows:

Coal Mining**:** Per the FDI policy, 100 percent FDI was only permitted in companies engaged in coal and lignite mining for captive consumption by power plants, iron and steel and cement units and not for any other incidental or associated activity. FDI up to 100 percent under automatic route has now also been permitted in a company engaged in the business of sale of coal and coal mining activities, including associated processing infrastructure (ie, activities in the nature of: (i) coal washery; (ii) crushing; (iii) coal handling; and (iv) magnetic and non-magnetic separation).

Contract Manufacturing: While FDI up to 100 percent was allowed under the automatic route in the manufacturing sector, it was not specifically clarified under the extant FDI policy that whether a company not undertaking manufacturing activity directly but through contract labour would be eligible to receive FDI. PN 4 of 2019 has now expressly clarified that a company engaged in manufacturing activity even through contract manufacturing, either on a: (i) principal to principal basis; or (ii) principal to agent basis, would be eligible to receive FDI under the automatic route.

SBRT:

(i) *Automatic route:* Earlier, a company engaged in SBRT was permitted to receive FDI in excess of 49 percent only after obtaining prior approval from DPIIT. PN 4 of 2019 has now permitted a company engaged in SBRT to receive FDI up to 100 percent under the automatic route.

(ii) *Relaxed sourcing requirement*: While the extant sourcing requirements (ie, requirement to locally source 30 percent of the value of goods) have been retained, PN 4 of 2019 has relaxed the stringent requirements by, specifying that all procurements made from India would now be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported; and offering single brand retailers with an option to set off their sourcing requirements against the value of goods sourced, either directly (including through their respective group companies) from India for their global operations (in INR terms) in a particular financial year, or indirectly through a third party.

(iii) *Retail trading through e-commerce*: Single brand retailers have now been allowed to engage in retail trading through e-commerce, without mandatorily setting up a brick and mortar store. However, such single brand retailers would be required to open a brick and mortar store within 2 years from date of commencing of their online operations.

(iv) *Submission of license by the investee company*: The requirement to submit copy of the licensing / franchise / sub-license agreement with the Reserve Bank of India (in case of FDI license agreement, with the Reserve Bank of India (in case of FDI up to 49 percent) and with the DPIIT (in case of FDI in excess of 49%) has now been done away with.

Digital Media: FDI up to 26 percent under government route has now been specifically permitted for companies engaged in the activity of uploading / streaming of news and current affairs through 'digital media'. In the absence of any prescribed FDI limit in the digital media sector in the current FDI policy, certain online media companies, web portals and content aggregators, already have FDI.

What about the results?

The government, in keeping with its objective, to make India an attractive investment destination has relaxed the FDI norms in the relevant sectors. These amendments are a welcome change and may prove to be a step to temper the recent slump experienced in the foreign investment drive in the country. The clarification introduced in the manufacturing sector is expected to give the necessary impetus to the 'Make in India' drive of the government.

Similarly, permitting FDI in the companies engaged in the business of sale of coal and coal mining activities would help in establishing an effective coal market in the country. It is also expected that the liberalisation in the local sourcing norms will accentuate investments in the SBRT sector to serve both domestic as well as international players.

However, considering the FDI norms introduced vis-à-vis the digital media sector has not clarified the categories that would be included thereunder, it remains to be seen if companies engaged in an activity bearing any semblance with digital media would now be required to divest or restructure the previously infused FDI or would the Reserve Bank of India be forthcoming in ratifying the already infused FDI in such companies on an omnibus basis or take these incidents on a case by case basis.

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Tags coal mining | Digital Media | FDI | manufacturing | Retail