# Devadhaantu Insights – November 2021

Dear Reader,

Greetings!

We are happy to present the Devadhaantu Insights highlighting important legislative updates in direct taxes and regulatory updates in SEBI, IBC, FEMA and Corporate laws.

We hope that we are able to provide an insight into various updates that you would find to be informative as well as useful. For any deeper discussion as to how the updates covered in this document could affect your transactions, please do not hesitate to contact Devadhaantu.

Happy Reading!
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## Thank You

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# DIRECT TAX UPDATES

## NOVEMBER 2021

# Direct tax updates (1/4)

**Branch office (Flat) owned as business asset on which depreciation was allowed shall continue to be considered as a depreciable business asset even if ceased to be used for the purpose. Sale of such branch office shall be taxable under section 50 as it continues to be classified as depreciable asset[1]**

Shakthi Metal Depot ('the Assessee') purchased a flat in 1974 and used it as a branch office, on which depreciation was allowed till AY 1995-96. The assessee discontinued its claim of depreciation in AY 1996-97 on the ground that it was no longer used for business purposes. Subsequently the flat was then sold in AY 1998-99 and the assessee treated the profit on the sale of the flat as long term capital gains.

The Kerala High Court had held in this case that for sale of a depreciable asset to be covered under section 50 of the Income Tax Act, 1961('ITA'), there was no need for the assessee to have claimed depreciation continuously for the entire period upto the date of sale. It further held that since the assessee had been allowed depreciation on the flat as a business asset, it continued to be a part of the depreciable asset block, despite its non-use in the two years before the sale and therefore, profit arising thereon would be taxable as short term capital gains under section 50 of the ITA. The Supreme Court upheld the High Court order and the taxability under section 50 of the ITA.



1 Sakthi Metal Depot [2021] 282 Taxman 384 (SC)

# Direct tax updates (2/4)

**Delhi High Court: Tax on dividend receivable by a Dutch company allowed to be withheld at 5% based on the Most Favoured Nation clause in the India-Netherlands Tax Treaty[1]**

Deccan Holdings B V ('the Assessee Company') held 58.39% shares in an Indian company, which proposed to distribute dividend of Rs. 65.68 Cr to its shareholders for FY 2021-22. Since the Assessee Company was shareholder in the Indian Company, it was recipient to the dividend declared by Indian Company. Further, since the Assessee Company was eligible to the beneficial tax rate of the India-Netherlands Tax Treaty, it filed an application under section 197 of the ITA for a certificate with lower withholding tax rate on the dividend receivable. Although the tax rate applicable to dividend income as per the relevant Article of the India-Netherlands Tax Treaty is 10%, the Assessee Company requested for a lower withholding tax rate of 5% based on the Most Favoured Nation (MFN) clause in the Protocol of the Treaty, since India has entered into Tax Treaties with other OECD member countries such as Slovenia / Lithuania / Colombia wherein tax rate on dividend income was agreed at a lower rate of 5%. However, the application to withhold tax at 5% was rejected and a certificate issued under section 197 of the ITA at the rate of 10% was issued, the Assessee Company filed a writ petition with the High Court.

It was contended by the Assessee Company that the issue was fairly covered and concluded by the rulings of the High Court in the case of Concentrix Services Netherlands B.V.[2] and Nestle SA[3], that the certificate issued under section 197 of the ITA to the Assessee Company was in contravention of the settled position of law. The counsel for the Revenue admitted that the issue was covered in the aforementioned cases and hence, the High Court set aside the impugned order and directed that a certificate under section 197 of the ITA be issued in favour of the Assessee Company, indicating therein, that the rate of tax on dividend is 5% under India-Netherlands Tax Treaty.

1 Deccan Holdings B V [TS-1008-HC-2021(DEL)]
2 Concentrix Services Netherlands B.V. v. ITO (TDS) [W.P.(C) 9051/2020 [2021] 127 taxmann.com 43 (Delhi)]
3 Nestle SA v. Assessing Officer [W.P.(C) 3243/2021]

# Direct tax updates (3/4)

## US Tax Court : Foreign Tax Credit under tax treaties are subject to provisions of the domestic law[1]

Catherine S. Toulouse [TS-1034-FC-2021(USA)] ('the Assessee') was a US citizen residing in a foreign country. She claimed credit for taxes paid in earlier years in France and Italy against the levy of net investment income tax (NIIT) (i.e. tax on investment income such as capital gains, dividends, and rental property income) in the US while filing the income tax return for 2013. The tax credit was claimed as per Article 24(1)(a) of the US-France Tax Treaty and as per Article 23(2)(a) of the US-Italy Tax Treaty, respectively.

While scrutinising the tax return, the tax authorities, inter alia, informed the taxpayer that credit for foreign taxes is provided only against taxes levied under Chapter 1 of the US Internal Revenue Code ('IRC') whereas NIIT was a levy under Chapter 2A. The tax authorities accordingly opined that the credit for taxes paid in France and Italy was not available because the IRC does not provide for the offset of foreign taxes against the levy of NIIT. The assessee filed an appeal to the US tax court.

The US Tax Court held that the assessee is not entitled to offset taxes paid in France and Italy in earlier years against the NIIT in the US on account of the following:

- The IRC provides that the offset of the foreign tax is permissible only against the levy of regular tax and not against the levy of NIIT. Further, the Income Tax Regulations specifically addressed the issue of foreign tax credit against the NIIT and explained that the IRC does not provide for foreign tax credit;
- The relevant text of the US-French tax treaty and US-Italian tax treaty explicitly provide that foreign tax credit must be determined as per the IRC. The claim of the foreign tax credit is, thus, limited by the IRC's provision of foreign tax credit.



1 Catherine S. Toulouse [TS-1034-FC-2021(USA)]

# Direct tax updates (4/4)

**Bangalore ITAT: Tax department not giving due weightage to valuation report; addition of share premium under section 56(2)(viib) deleted[1]**

GMR Enterprises Pvt Ltd ('The Assessee Company') allotted rights shares and non-cumulative convertible preference shares in FY 2015-16 at a total premium of INR 258.24 Cr. based on a share valuation report obtained from a Chartered Accountant where the value for the shares was arrived at by adopting Discount Cash Flow (DCF) Method and also under Net Asset Value (NAV) Method.

The Assessing Officer ('AO') rejected the Assessee Company's approach, valued the shares himself using the NAV method and made an addition under section 56(2)(viib) of the ITA of the amount received in excess of the NAV value determined by him. Even the DRP upheld the AO's approach and the Assessee Company appealed to the Bangalore Tribunal.

The Tribunal observed that the AO had not actually examined the DCF method valuation furnished by the Assessee Company and has ignored the methodology prescribed in Rule 11UA for valuing quoted shares (which were investments made by the Assessee Company), which accounts for the major difference in the valuation. The Tribunal noted that the NAV method valuation determined by the AO himself suffered from major defects and thus, held that the AO's opinion regarding the rejection of the valuation reports relied upon by the Assessee Company was liable to be rejected. The Tribunal restored the issue to the file of the AO for fresh examination to determine whether the valuation reports have been prepared in accordance with Rule 11UA.



1 GMR Enterprises Pvt. Ltd [TS-1005-ITAT-2021(Bang)]

# MINISTRY OF CORPORATE AFFAIRS (‘MCA’) UPDATES

NOVEMBER 2021

# MCA - Regulatory update

## MCA initiates process of de- flagging of eligible DINs vide Notice dated November 10, 2021[1]

MCA has begun the process of de-flagging of eligible DINs on expiry of the period of five years which pertained to disqualification of directors under the Section 164(2)(a) of the Companies Act, 2013 ('the Cos Act') w.e.f. November 1, 2016. Pursuant to this the DINs of the respective Directors shall be activated.

Section 164(2)(a) of the Cos Act provides that a director of a company, of which financial statement or annual return are not filled for a continuous period of 3 financial years, shall not be eligible to be re-appointed in that company or appointed in another company for a period of 5 years from the date on which the said company fails to do so.

## Hyderabad NCLT approves scheme of arrangement involving demerger among group companies without a valuation report [1]

GAR Corporation Pvt Ltd ('the Petitioner Company 1') and Laxmi Infobahn One Pvt Ltd ('the Petitioner Company 2'), together referred to as 'the Petitioner Companies', had filed a scheme of arrangement for demerger of business undertaking with a mirror shareholding pattern with appointed date as 1 April 2019. As per the requirement of the law, the Regional Director, in its report on the Scheme, made some observations, one of which required the Petitioner Companies to furnish a certificate from a Registered Valuer regarding the valuation of the proposed scheme.

The petitioner companies submitted that a valuation report was not necessary in its case since there was no change in the shareholding pattern of demerged or the resulting companies. Therefore, since there was no share swap pursuant to the scheme, no valuation was necessary. The NCLT took note of the response provided by the petitioner company and approved the scheme of arrangement.



1 GAR Corporation Pvt Ltd & Laxmi Infobahn one Pvt Ltd & Ors, CA/36/2021 in CP(AA) Merger & Amalgamation/ 34/2021, NCLT, Hyderabad, dated 01.10.2021

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (‘IBBI’) UPDATES

NOVEMBER 2021

# IBBI Regulatory updates (1/2)

**IBBI issues clarification regarding obtaining No Objection Certificate or No Dues Certificate from the Income Tax Department during Voluntary Liquidation Process [1]**

Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 ('the Regulations') mandates the liquidator to make the public announcement within five days of his appointment, calling for submission of claims by stakeholders within thirty days from the liquidation commencement date. If claims are not submitted within the aforesaid time, then corporate person may get dissolved without dealing with such claims and such claims may consequently get extinguished.

It has been noticed that the liquidators seek 'No Objection Certificate' ("NOC") or 'No Dues Certificate' ("NDC") from the Income Tax Department despite the fact that the Code or the Regulations do not envisage seeking. The process of applying and obtaining of such NOC/NDC from the Income Tax Department consumes substantial time and thus militates against the express provisions of the Code, and also defeats the objective of time-bound completion of process under the Code.

Hence the authority issues a clarification that under the voluntary liquidation process requirement of seeking any NOC/NDC from the Income Tax Department as part of compliance in the said process is henceforth not required.

# IBBI Regulatory updates (2/2)

**IFSCA notifies International Financial Services Centres Authority (Operations of International Financial Services Centres Insurance Intermediary Offices) Guidelines, 2021 vide Circular dated November 01, 2021[1]**

The Authority had notified the (Insurance Intermediary) Regulations, 2021 on October 20, 2021. Under the said regulations, the Authority was required to specify certain Guidelines, forms etc. for compliance by international Financial Services Centres Insurance Office ("IIOs") / the Applicants of IIO. Hence in pursuance of the above said Regulation, these Guidelines has been notified. These Guidelines aim to put in place a framework to address operational issues of such IIOs.

The broad areas that the new Regulation cover are:

- Chapter I - Applicability and legal provisions;
- Chapter II - Fee Structure;
- Chapter III – Fit and Proper Criteria ;
- Chapter IV - Qualification, Training and Examination Requirements;
- Chapter V - Format for Maintenance of Records;
- Chapter VI – Manner of Change in Beneficial Ownership of Shares or Contribution and Control;
- Chapter VII – Payment of Remuneration, Reward, Fee or any other Payment to an IIIO;
- Chapter VIII – Segregation of Insurance Money;
- Chapter IX - Outsourcing of Activities;
- Chapter X - Amalgamation, Merger & Acquisition and Transfer of Business; and
- Chapter XI - Sale of Insurance Business through Digital Modes.

# SEBI REGULATORY UPDATES

## NOVEMBER 2021

# SEBI Regulatory updates (1/9)

**SEBI amends Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 vide Gazette Notification Dated November 09, 2021[1]**

This amendment shall be called Securities and Exchange Board of India (Alternative Investment Funds) (Fifth Amendment) Regulations, 2021, vide this SEBI has made the following changes:

- Introduction of the term co- investment – meaning investment made by a Manager or Sponsor or investor of Category I and II AIFs in investee companies where such Category I or Category II AIF make investment
- In Regulation 15 (General Investment Conditions) terms of Co-investment in an investee company by a Manager or Sponsor or co-investor, shall not be more favourable than the terms of investment of the AIF, further terms of exit from the Co-investment in an investee company including the timing of exit shall be identical to the terms applicable to that of exit of the AIF
- Category III AIFs shall not invest more than 10 % of the net asset value in listed equity of an Investee Company and shall invest not more than 10% of the investable funds in securities other than listed equity of an Investee Company, directly or through investment in units of other AIFs, however accredited investors of Category III AIFs are permitted upto 20%
- The manager shall not provide advisory services to any investor other than the clients of co investment Portfolio Manager for investment in securities of investee companies where the AIF managed by it makes investment

1 SEBI Notification dated November 9, 2021

# SEBI Regulatory updates (2/9)

**SEBI amends provisions of Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 vide Gazette Notification dated November 09, 2021[1]**

A new definition for Co-investment Portfolio Manager has been inserted whereby a Portfolio Manager shall be any person who is a Manager of a Category I or Category II AIF and provides services only to the investors of such Category I or Category II AIF and makes investment only in unlisted securities of investee companies Category I or Category II AIFs.

Further the Co-investment Portfolio Manager may designate a member of the Key Investment Team of the Manager as the principal officer who fulfils eligibility conditions as maybe mentioned.

Further in case of Co-investment Portfolio Manager, terms of co-investment in an investee company by a co-investor, shall not be more favourable than the terms of investment of the AIF, further the terms of exit from the Co-investment in an investee company including the timing of exit shall be identical to the terms applicable to that of exit of the Alternative Investment Fund. Any early withdrawal of funds by the co-investors with respect to Co-investment in investee companies shall be allowed to the extent that the Alternative Investment Fund has also made an exit from respective investment in such investee companies.

Going forward Co-investment Portfolio Manager shall invest 100 % of the assets under management in unlisted securities of investee companies where Category I and Category II AIF which are also managed by it as Manager, makes investment.

1 SEBI Notification dated November 9, 2021

# SEBI Regulatory updates (3/9)

## SEBI issued FAQs on SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021[1]

SEBI has issued FAQs on SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021. Some of the key takeaways are as follows:

- Contractual employees are also eligible to receive benefits under the Share Based Employee Benefit Scheme, provided they are designated as employees by their employers and are exclusively working with such company or its group company, including subsidiary or its associate company or its holding company;
- The provisions of the ESOP Regulations shall be applicable to Restrictive Stock Units. Phantom stock options would not be covered under these Regulations;
- To meet regulatory requirements, an existing Scheme(s) may be amended to include the new class of employees without seeking shareholders' approval;
- Shares held by Trust shall be taken into account for the determination of percentage of voting rights under the SEBI Takeover Regulations.

1 Issuance dated November 16, 2021

# SEBI Regulatory updates (4/9)

**SEBI issues clarifications regarding amendments made to SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") vide Circular dated November 22,2021[1]**

The AIF Regulations had been amended to allow Category III AIFs, including any large value funds for accredited investors of Category III AIFs, to calculate the concentration norm based on Net Asset Value ("NAV") of the fund for investment in listed equity of an investee company.

In this regard, the following clarifications have been issued, among other things which include –

- The limit for investment in listed equity shall be calculated based on the NAV of the fund on the business day immediately preceding the date on which the Category III AIF makes such investment; and
- NAV of the AIF shall be the sum of value of all securities adjusted for mark to market gains/losses (including cash and cash equivalents). The NAV shall exclude any funds borrowed by the AIF.

Further, the AIF Regulations were amended to include the term co-investment, in respect to this amendment it has been clarified that appointment of custodian, shall be applicable if the sum of corpus of the AIF and the value of the co-investment managed by the Manager of the AIF as co-investment Portfolio Manager is more than INR 500 Crore (Indian Rupees Five Hundred Crore only).

1 SEBI Notification dated November 9, 2021

# SEBI Regulatory updates (5/9)

**SEBI Mandates certain disclosures to be made by Merchant Bankers ("MB") vide Circulars dated November 23, 2021 and November 26, 2021[1]**

Provisions of these Circulars shall come into effect from January 01, 2022.

With a view to provide investors an idea about the various activities pertaining to primary market issuances as well as exit options like Takeovers, Buybacks or Delisting, an Investor Charter disclosed in (Annexure-A of this Circular) has been developed in consultation with the MB, which is advisable to be disclosed on the website of such MBs.

Further MBs in order to bring about transparency in the Investor Grievance Redressal Mechanism shall in addition also disclose the data on complaints received against them or against issues dealt by them and redressal thereof latest by 7th of succeeding month as per Annexure B of this Circular.

Further with a view to provide investors relevant information about the various activities pertaining to primary market issuances in the debt market, a separate Investor Charter has been prepared for such MBs.

A separate Investor Charter has also been made applicable to MBs about the primary market issuances by REITs and InvITs.

1 SEBI Circulars dated November 23, 2021 and November 26, 2021

# SEBI Regulatory updates (6/9)

## SEBI prescribes information to be submitted to audit committee and shareholders for approval of RPTs[1]

In continuation of the amendments made to the SEBI LODR Regulations vide Circular dated November 9, 2021 (as discussed above), SEBI has made available the format for disclosure of the RPTs to stock exchanges.

Further, it has also prescribed the information that should be submitted to the audit committee and the shareholders for the approval of proposed RPT. Some key information includes details of source of funds if the transaction relates to loan or inter-corporate deposits, advances, or investments; applicable terms; purpose for which the funds will be utilized; justification for why the RPT is in interest of the listed entity; copy of the valuation report, if any; etc.

1 SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated November 22, 2021

# SEBI Regulatory updates (7/9)

## SEBI notifies amendment to RPT definition under LODR Regulations[1] (1/4)

SEBI has made the following amendments to the LODR Regulations pertaining to Related Party Transactions (RPTs):

| Existing Regulations | Amendments | Remarks |
|---|---|---|
| **First proviso to Reg. 2(1)(zb) i.e. definition of "related party" –**<br>Any person or entity, inter alia, holding 20% or more of shareholding in the listed entity was deemed to be a related party. | From April 1, 2023 onwards, any person or any entity, *inter alia*, holding equity shares of **10%**, either directly or on a beneficial interest basis, **at any time, during the immediate preceding financial year,** shall be deemed to be a related party. | The threshold for including entities as related party is being broadened by reducing the threshold of shareholding to 10% from April 1, 2023. |
| **Reg. 2(1)(zc) i.e. definition of "related party transaction" –**<br>Related party transaction was defined to mean transfer of resources, services or obligations **between a listed entity and a related party.** | It will now include transactions between:<br>i. a listed entity **or any of its subsidiaries** on one hand and **a related party of** the listed entity or **any of its subsidiaries** on the other hand; or<br>ii. a listed entity **or any of its subsidiaries** on one hand, **and any other person or entity** on the other hand, **the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries**, with effect from April 1, 2023; | RPT definition is being broad-based by including transactions between subsidiaries of listed entities and their related parties. This shall further be broadened from April 1, 2023 by including transactions with any person, if it results in benefitting a related party of the listed company or its subsidiaries; its subjective dimensions are a source of controversy. |

# SEBI Regulatory updates (7/9)

## SEBI notifies amendment to RPT definition under LODR Regulations[1] (2/4)

| Existing Regulations | Amendments | Remarks |
|---|---|---|
| | However, some transactions have been specifically excluded (subject to disclosures), such as issue of specified securities on a preferential basis, corporate actions which are uniformly applicable/ offered to all shareholders, acceptance of fixed deposits by banks/ NBFCs. | |
| **Explanation to Reg. 23(1) i.e. material related party transaction –**<br>RPT was considered material if the transaction(s) exceeds 10% of the annual consolidated turnover of the listed entity. | RPT shall now be considered material if the transaction(s) **exceeds INR 1,000 crore or 10%** of the annual consolidated turnover of the listed entity, **whichever is lower**. | Additional monetary threshold is inserted for qualifying a transaction as RPT, thereby providing relief to smaller transactions/ entities. |
| **Reg. 23(2) i.e. Audit committee approval –**<br>All related party transactions require prior approval of the audit committee. | In addition to RPTs, any **material modifications** shall require prior approval of the audit committee.<br>It is also provided that RPT where only subsidiary of the listed company is a party shall require audit committee approval only if the value exceeds 10% of consolidated turnover (10% of standalone turnover, from April 1, 2023). | Any material modifications to RPTs, and not only initial transactions, shall require audit committee approval |

# SEBI Regulatory updates (7/9)

## SEBI notifies amendment to RPT definition under LODR Regulations[1] (3/4)

| Existing Regulations | Amendments | Remarks |
| --- | --- | --- |
| **Reg. 23(4) i.e. approval of shareholders –** All material related party transactions shall require approval of the shareholders through resolution. | In addition to material RPTs, any **subsequent material modification** shall require **prior** approval of the shareholders through resolution. | It is specified that **prior** approval of shareholders shall be required, not only for material RPTs but also for material modifications. |
| **Reg. 23(5) i.e. carve out from audit committee approval/ shareholder approval –** <br><br> Audit committee and shareholder approvals were not required for transactions **between a holding company and its wholly owned subsidiary** whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. | The carve out from audit committee and shareholder approval is also extended to **transactions between two wholly-owned subsidiaries** of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. | Transactions between wholly owned subsidiaries of a listed company should also not require audit committee and shareholder approvals. |

# SEBI Regulatory updates (7/9)

## SEBI notifies amendment to RPT definition under LODR Regulations[1] (4/4)

| Existing Regulations | Amendments | Remarks |
|---|---|---|
| **Reg. 23(9) i.e. disclosures –** Disclosures were required to be made 30 days from the date of publication of standalone and consolidated financial results for the half year. | Disclosures should now be made **within 15 days** from the date of publication of standalone and consolidated financial results every 6 months.<br><br>However, from April 1, 2023, such disclosures shall be made **on the date of publication** of standalone and consolidated financial results every 6 months. | The time period within which the disclosures are to be made has been reduced to 15 days (eventually to the same day) from publishing the financials. |

# SEBI Regulatory updates (8/9)

## SEBI amends the framework for schemes of arrangement by listed entities[1]

SEBI has issued a Master Circular amending certain provisions of the framework for Schemes of Arrangement by listed entities as laid down under earlier SEBI Master Circular dated December 22, 2020.

The key amendments introduced by the Circular are summarised below:

**Additional documentation/ declaration:**

- While submitting a valuation report to the stock exchange for its in-principle approval, the listed entity must also submit an undertaking stating that there has been no material event impacting the valuation during the period under consideration for valuation report till the filing of the scheme documents with stock exchange.
- Declaration on any past defaults of listed debt obligations of all the entities forming part of the Scheme.
- No Objection Certificate (NOC) from the lending scheduled commercial banks/ financial institutions/ debenture trustees.

**Fractional entitlement related amendments**

- All fractional entitlements, if any, shall be aggregated and held by the trust and the trust shall sell such shares in the market, at such price, within a period of 90 days from the date of allotment of shares, as per the draft scheme submitted to SEBI.
- Listed entity to submit to stock exchange, a report from its Audit Committee and the Independent Directors certifying that it has compensated all the eligible shareholders within 7 days of compensating the shareholders.

1 SEBI Master Circular dated November 23, 2021

# SEBI Regulatory updates (9/9)

**SEBI issues norms for Silver Exchange Traded Funds ("Silver ETFs") and Gold Exchange Traded Funds ("Gold ETFs") vide Circular dated November 24, 2021[1]**

SEBI had amended the SEBI (Mutual Funds) Regulations, 1996 vide a Gazette Notification dated November 09, 2021 in order to have regulatory mechanism for Silver ETF, in regard to this, the following norms have been prescribed which among other things shall include the following:

- Investment Objective;
- Investments;
- Valuation;
- Determination of NAV;
- Total expense ratio;
- Disclosure requirements etc.

In respect to Gold ETFs, they shall have to comply with the following Norms of this Circular:

- Disclosure of NAV and other disclosures;
- Tracking Error & Tracking Difference;
- Dedicated Fund Manager;

1 SEBI Master Circular dated November 24, 2021

# RBI REGULATORY UPDATES

## NOVEMBER 2021

# RBI Regulatory updates

## RBI allows FPIs to invest in debt securities issued by InvITs and REITs[1]

It has been decided to permit Foreign Portfolio Investors (FPIs) to invest in debt securities issued by InvITs and REITs. This change is in accordance with the announcement made in the Union Budget 2021-22 that debt financing of InvITs and REITs by FPIs will be enabled by making suitable amendments in the relevant legislations.

FPIs can acquire debt securities issued by InvITs and REITs under the Medium-Term Framework (MTF) or the Voluntary Retention Route (VRR) and such investments shall be reckoned within the limits and shall be subject to terms and conditions for investments by FPIs in debt securities under the respective regulations of MTF and VRR.

Consequential amendments to Foreign Exchange Management (Debt Instruments) Regulations, 2019 have been notified[2] on October 13, 2021, whereby debt securities issued by InvITs and REITs have been inserted in the list of debt instruments which FPIs are permitted to purchase on repatriation basis under Schedule I of Foreign Exchange Management (Debt Instruments) Regulations, 2019.

1 RBI/2021-22/120 A.P. (DIR Series) Circular No. 16, dt November 8, 2021
2 No. FEMA.396(1)/2021-RB., dt October 13, 2021

## Government increases the FDI cap in Telecom sector[1]

The Central Government has increased the cap for Foreign Direct Investment (FDI) in Telecom sector to 100% under automatic route. Previously, the FDI in Telecom sector was permitted upto 49% under automatic route and beyond 49% through Government approval route.

1 DPIIT FDI Policy Section, Press Note No. 4 (2021 Series), dt October 6, 2021