

RBI Circular bearing A.P. (DIR Series) Circular No. 127 dated May 2, 2014

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In an important development, Reserve Bank of India (RBI) has issued a fresh Circular No. 127 bearing RBI/2013-14/577 dated May 2, 2014 whereby the RBI has notified fresh reporting mechanism in cases of acquisition of shares and debentures by Non-Resident (NR) including NRI from the stock exchange in India through a registered broker under the FDI Scheme in terms of A.P. (DIR Series) Circular No. 38 dated September 6, 2013.

Why new circular?

Last year, in a major variance from its earlier restrictions, the Reserve Bank of India vide its Circular No. 38 dated September 6, 2013, has permitted the Non Resident including the Non-resident Indian to acquire the shares of a listed Indian company on the stock exchange through a registered broker under FDI scheme, provided that the Non Resident investor has already acquired and continues to hold control in Indian company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations and adhere to pricing guidelines alongwith the instructions for mode of payment of consideration for such an acquisition. But while permitting the aforesaid acquisition of shares/ debentures by Non Resident, the Reserve Bank of India did not notify any reporting mechanism to be followed either by investee (whose shares/debentures have been acquired) or by AD Category-I bank, which reporting mechanism has been consistently followed at every instance of Foreign Direct Investment in India.

Accordingly, to remove this lacuna and to promote transparency and accountability in such transactions of acquisition by Non Resident a need for placing a reporting mechanism was strongly felt as many transactions remained unreported to the Reserve Bank of India in respect to acquisition of shares and debentures by the Non Resident (NR) due to non provision of any such reporting. Therefore, in order to rationalize the process and promote operational convenience, the Reserve Bank of India has notified the recent circular.

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When new circular trigger?

The circular will trigger when a Non-Resident (NR) investor, foreign company etc. including Non Resident Indian (NRI) who has already acquired and continues to hold control in Indian company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations and is further intended to invest and acquire equity shares, preferential shares and fully and mandatorily convertible debentures from the recognized stock exchange in India under prevalent Foreign Direct Investment (FDI) policy of India.

Where onus lies for reporting compliance?

The new circular has laid onus for reporting compliance on the listed Indian company whose shares have been purchased/ acquired from recognized Indian stock exchange through registered broker in terms of FDI policy. In other word, the duty of reporting such a transaction has been imposed upon Investee Company. The investee company is required to submit form FC-TRS with AD Category –I bank within 60 days of receipt of consideration for such an acquisition of shares/debentures by a Non Resident. Further in turn the AD Category-I bank would be verifying the details and after certifying the same would submit the same to the Reserve Bank of India.

It is important to mention herein that though while permitting the Non Resident to acquire shares and debentures of the companies listed in the Indian stock exchange, no reporting requirement for such transactions by NR including NRI's were directed by RBI but, the reporting requirement in instances of transfer of shares and debentures were in place and the submission of form FC-TRS within 60 days with AD Category-I bank alongwith reporting of such transfer of shares and debentures was notified to be made to the RBI. The onus of submission of the form FC-TRS with AD Category-I bank within the given time frame of 60 days was casted upon the transferor/ transferee, whoever is resident in India. Further, as per the practice, the AD category-I bank seeks approval from the Reserve Bank of India, Central Office before certifying the form FC-TRS received by them beyond the prescribed period of 60 days.

To put forth succinctly, the circular has laid down the new instructions as below:

1. A duty is cast upon the investee company/Indian company for submission of form FC-TRS with the AD Category-I bank within a period of 60 days from the date of receipt of the amount of consideration in cases of acquisition of shares and debentures by the Non Resident (NR) including NRIs from the recognized stock exchange in India.
2. AD Category-I bank may now approach Regional Office concerned of RBI, Foreign Exchange Department to regularize the delay in submission of form FC-TRS, instead of approaching Central Office of Reserve Bank of India.

It is not out of place to mention herein that non compliance of reporting requirement of the Reserve Bank of India attracts penalty as either expressly notified by the Reserve Bank of India or otherwise as provided under the provisions of Foreign Exchange Management Act, 1999.

Analysis

The Reserve Bank of India vide this new circular has attempted to curb the unreported transactions which stimulate, inspire and pose systematic financial risk on the market. The monitoring of these transactions is very important to avoid the involvement of black money and illegal finances in the transactions and keep a check on the source of finances.

The Authorised Dealer Category-I bank has been directed to approach regional office concerned of the Reserve Bank of India for regularization of form FC-TRS in case of submission of form FC-TRS is delayed and beyond 60 days by the Investee Company in order to lower the burden of the Central Office, Reserve Bank of India. This step is welcome step and would expedite the process and facilitate the operational convenience.

To see the circular notification, kindly follow the below link: -

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=8859&Mode=0>