

Govt simplifies cross-border share swaps

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New Delhi

The government on Friday permitted cross border share swaps. Also, it has harmonised the definition of Start-Up Company in Foreign Exchange Management rules, beside allowing 100 per cent Foreign Direct Investment (FDI) in white label ATM.

These changes are result of FY 2024-25 Union Budget announcement, where Finance Minister Nirmala Sitharaman talked about simplifying rules and regulations for foreign direct investment and overseas investment.

Accordingly, Foreign Exchange Management (Non-debt Instruments) Rules, 2019 have been amended.

“The amendments aim to simplify cross-border share swaps and provide for the issue or transfer of Indian company equity instruments in exchange for foreign company equity instruments,” a statement by the Finance Ministry said.

Further it mentioned that such a move will facilitate the global expansion of Indian companies through mergers, acquisitions, and other strategic initiatives,



OTHER PROPOSALS. The government also harmonised start-up definition and allowed 100% FDI in white label ATMs, simplifying the investment rules ISTOCKPHOTO

enabling them to reach new markets and grow their presence worldwide.

OVERSEAS INVESTMENTS

The notification prescribed that transfer of equity instruments of an Indian company between a person resident in India and a person resident outside India might be by way of swap of equity instruments, in compliance with the rules prescribed by the Central Government and the regulations specified by the Reserve Bank from time to time.

It could also be done through swap of equity capital of a foreign company in compliance with the rules prescribed by the Central government including the Foreign Exchange Management, (Overseas Investment) Rules, 2022, and the

regulations specified by the Reserve Bank from time to time.

PRIOR APPROVAL

In all these cases, “prior Government approval shall be obtained for transfer in all cases wherever Government approval is applicable,” the notification said.

It also said that an Indian company might issue equity instruments to a person resident outside India against swap of equity instruments or import of capital goods or machinery or equipment (excluding second hand machinery) or through pre-operative or pre-incorporation expenses (including payments of rent, etc.)

Another key change brings further clarity on the treatment of downstream investments made by Overseas Cit-

izen of India (OCI)-owned entities on a non-repatriation basis, aligning it with the treatment of Non-Resident Indian (NRI)-owned entities. The notification harmonised the definition of control with the Companies Act and Takeover Code.

“The much-awaited synchronisation of the definition of control across key regulations would ensure consistent interpretation by different regulators and lead to seamless transactions,” said Mayank Arora, Director-Regulatory, Nangia Andersen India.

DPIIT NOTIFICATION

In terms of start-ups the latest DPIIT notification raised the turnover threshold for being a start-up increased to ₹100 crore from ₹25 crore.

Further, under the latest DPIIT notification start-ups would continue to be recognised as such for a period up to 10 years from incorporation. Now, with this alignment of the definition of start-up with latest DPIIT notification provides clarity on the status of start-ups for the purposes of FDI into India and would make such start-ups more attractive for foreign investor.

FOREX RULES AMENDED

Cross-border share swaps eased by govt

RUCHIKA CHITRAVANSHI

New Delhi, 16 August

The Union Finance Ministry on Friday announced key amendments to foreign exchange (forex) regulations, including mandating government approvals for all investments originating from countries that share land borders with India.

The latest amendments also seek to simplify cross-border share swaps and streamline key definitions, such as “control”.

The updated regulations have aligned the treatment of downstream investments made by overseas citizen of India (OCI)-owned entities with those

owned by non-resident Indians (NRIs) on a non-repatriation basis. This is to foster greater participation of NRI funds in the Indian market.

“This (amendments) will facilitate the global expansion of Indian companies through mergers, acquisitions, and other strategic initiatives, enabling them to reach new markets and grow their presence worldwide,” a Finance Ministry statement said on Friday, while announcing amendments to the Foreign Exchange Management Act (FEMA).

Of particular significance is the clarification on government approvals for investments. Previously, such approvals were required only when the Indian company operated in a sector where foreign investment was subject to government review. However, under the new amendments, government clearance will now be necessary for any transfer of shares involving countries that share land borders with India, regardless of the sector in question, explained Mayank Arora, director of regulatory affairs at Nangia

Now, transfer of all shares in firms having FDI with countries sharing land borders, would require prior government approval

Andersen India.

The amended rules have also brought clarity to the position of OCIs. “The relaxation available to NRIs — where investments made on a non-repatriation basis are not considered as FDI — has now been extended to OCIs,” said Rajesh Gandhi, a partner at Deloitte.

In another key change, the definition of “control” has been standardised to ensure consistency across various Acts and laws. The rules now specify that two or more foreign portfolio investors (FPIs), including foreign governments, will be considered part of an investor group if they share more than 50 per cent common control.