FEMA Hotline

June 13, 2018

ONE STOP FORM FOR FOREIGN INVESTMENTS IN INDIAN ENTITIES

- RBI introduced Single Master Form reporting to subsume all foreign investments related reporting requirements, irrespective of the mode or instrument through which the foreign investment is made.
- Indian entities directed to input the data on total foreign investment received by such entities till date in a dedicated interface to be provided by the RBI on its website between June 28, 2018 to July 12, 2018.

Joining hands in the Government's endeavor to ease doing business in India, the Reserve Bank of India plans to introduce Single Master Form reporting system which would subsume all reporting requirements, irrespective of the mode or instrument through which the foreign investment is made.

REPORTING IN SINGLE MASTER FORM

Foreign direct investment in India, on a repatriable basis, is made by non-residents through eligible capital instruments such as Equity Shares, Compulsory Convertible Preference shares, Compulsorily Convertible Debentures and Share Warrants, issued by the investee company or by contributing to the capital of a Limited Liability Partnership (LLP). At present, the reporting of the above transactions resulting in foreign investment are in a disintegrated manner across various platforms/modes depending on the mode or instrument through which the foreign investment is made.

Regulation 13 of the Foreign Exchange Management (Transfer or Issue of Security by Person Resident Outside India) Regulations, 2017 ("**TISPRO Regulations**") currently prescribes twelve (12) different types of forms for FDI reporting including Advance Remittance Form, Form FC-GPR, Form FC-TRS, Annual Return on Foreign Labilities and Assets, Form ESOP, Form DRR, Form LLP (I), Form LLP (II), Form Convertible Notes, Downstream Investment Form, Form LEC (FII) and Form LEC (NRI).

In order to integrate the extant reporting structures of various types of foreign investment in India, the RBI vide its circular no. RBI/2017-18/194 A.P. (DIR Series) Circular No. 30 dated June 7, 2018 ("**SMF Circular**") introduced a system of Single Master Form ("**SMF**"). The SMF is proposed to be an online form that would subsume eight (8) of the above twelve (12) reporting requirements, along with an additional obligation of reporting in case of investment by person resident outside India in an Investment Vehicle including AIF, REIT and InVIT. Four (4) forms that may remain outside the framework of SMF, and may likely continue to be filed in the manner they are currently filed with the RBI, are Advance Remittance Form, Annual Return on Foreign Labilities and Assets, Form LEC (FII) and Form LEC (NRI).

Advance Remittance Form is filed with the RBI through the Authorised Dealer Category – I Bank ("**AD Bank**") to report the receipt of foreign capital in India within thirty (30) days from the date of the receipt of the funds for issuance of a unique identification number (UIN), which is required to be cited during all future filings pertaining to such transaction. Annual Return on Foreign Labilities and Assets is an annual reporting done by Indian entities having foreign investment. Lastly, Form LEC (FII) and Form LEC (NRI) are the forms filed with the RBI by the custodian of an FPI and the AD Bank of an NRI respectively, in respect of portfolio investment.

RBI proposes to go live with the SMF framework sometime during the month of July, 2018. However, in meantime an indicative format of the proposed form has been prescribed by the RBI as Annexure 2 to the SMF Circular.

Analysis: Based on our analysis of the prescribed format, the SMF has been divided into three sections based on the type of details to be submitted. While the details sought under first and last sections would be common irrespective of the mode or instrument through which the foreign investment is made, details sought under the second section are the specific information pertaining to the mode or instrument through which the foreign investment is made.

Proposed framework of SMF would apply only to foreign direct investment and foreign portfolio investments and investments made by foreign portfolio investors (FPI) or foreign venture capital investors (FVCI) registered with Securities Exchange Board of India (SEBI) and non-resident Indian (NRI) investors investing under portfolio scheme have been kept outside its purview. Further, for the SMF framework to come into effect, necessary amendments may also have to be made to the TISPRO Regulations.

ENTITY MASTER FORM

While the technical team of RBI is in process of implementing the SMF framework, the RBI vide the SMF Circular has directed all Indian entities, including Indian company and LLPs, to input the data on total foreign investment received by such entities till date in a dedicated interface to be provided by the RBI on its website between June 28, 2018 to July 12, 2018. Indian entities not complying to above said direction may be barred from receiving any subsequent foreign investment (including indirect foreign investment) till regularization of contravention subject to the compounding in accordance with Foreign Exchange Management Act, 1999 and regulations made thereunder ("**FEMA**").

The dedicated interface for collection of data on total foreign investment has been called Entity Master. Further, in order to achieve timely launch of the SMF framework and therefore, ensuring that the Indian entities are in readiness with the requirements to be provided in the Entity Master, the RBI has prescribed the format of the Entity Master as Annexure 1 of the SMF Circular.

Analysis: The format of the Entity Master beside seeking identification details of Indian entities, specifically seeks information pertaining to foreign direct investment, foreign portfolio investment and the indirect foreign investments received by the Indian entities till date. However, it is unclear at this stage as to whether the preliminary reporting through Entity Master is limited only to the reported transactions or does it also include pending or to be reported foreign investment transactions. Further, for the purpose of collecting data on total foreign investments through Entity Master form, foreign investments received by Investment Vehicles by a person resident outside India is not required to be submitted with the RBI at this stage considering that no reporting of such investments are required under the extant TISPRO Regulations.

While the requirement of inputting data in the Entity Master form may be an additional compliance to some, it is also an opportunity for others to ascertain the regularity of foreign investments received by them in the past. Often it is discovered during the course of a due diligence ahead of a transaction that some or the other filing or reporting required under TISPRO Regulations was inadvertently missed out, therefore the requirement of Entity Master form should be seen as an opportunity to cover such tracks, if any.

CONCLUSION

SMF for reporting of various investments under the TISPRO Regulations is a welcome move by the RBI and it should ensure the much-needed uniformity in terms of various kinds of reporting that the Indian entities are obligated to do every time they receive foreign capital. However, considering the current practices of e-Biz filing through the AD Bank and provisions of the TISPRO Regulations regarding varying timelines for relevant reporting, the said transition and process of integration involved therein is likely to pose few practical challenges.

SMF Circular is a tip of the iceberg that will be unveiled in the days to come. Till then the Indian entities should ensure that the pre-requisites of this transition to the SMF framework are met within the prescribed window of fifteen (15) days and wait for the updated Master Direction on Reporting under FEMA to possibly get some clarity on the upcoming reporting regime. Alongside the Indian entities, the foreign investors having invested in such entities should also be cognizant about such reporting within the stipulated time to ensure that they are not barred from infusing further capital into their subsidiaries or other investment companies in India.

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You can direct your queries or comments to the authors

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the need to refer to the original pronouncements.