



SETTING UP OF LIAISON  
OFFICE OF A  
FOREIGN COMPANY  
IN INDIA  
GUIDELINES AND PROCEDURES

# Introduction

The first step in forming business links / investments in India is to form a Liaison office or a Branch office or a Project office.

Foreign Exchange Management Regulations, 2000 issued under FEMA governs the setting up of Liaison , Branch or Project office.

The above Regulations define a “Foreign Company” as a body corporate incorporated outside India, and includes a Firm or other association of individuals.

A Liaison office is quite distinct from Branch office.

A Liaison office is not allowed to carry on any business in India, while a Branch office is allowed to do business in India in terms of imports and exports. It cannot undertake local trading or manufacturing activities except software development.

Thus, establishing Liaison office or Branch office in India are limited market strategies and a more focused presence in India can be achieved only

**RESERVE BANK OF INDIA**  
**(EXCHANGE CONTROL DEPARTMENT)**  
**Notification No. FEMA 22 /2000-RB dated 3rd May 2000**

***Definition***

'Liaison Office' means a place of business to act as a channel of communication between the Principal place of business or Head Office by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel;

***Schedule II***

***Permitted activities for a Liaison office in India of a person resident outside India***

- i) Representing in India the parent company/group companies.
- ii) Promoting export import from/to India.
- iii) Promoting technical/financial collaborations between parent/group companies and companies in India.
- iv) Acting as a communication channel between the parent company and Indian companies.

# RBI Procedure for Approval

## ***Application to Reserve Bank for opening branch or liaison or project office etc.:-***

- (i) A person resident outside India desiring to establish a branch or liaison office in India shall apply to the Reserve Bank, in form FNC 1.
- (ii) Where a person resident outside India has secured from an Indian company a contract to execute a project in India, and
- Agency, or
- (a) the project is funded directly by inward remittance from abroad; or
- (b) the project is funded by a bilateral or multilateral International Financing Agency, or
- (c) the project has been cleared by an appropriate authority; or
- (d) a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the Project,
- a such person shall apply to the Reserve Bank in form FNC 1 for permission to establish a Project or Site Office in India.
- (iii) The Reserve Bank may grant permission subject to such terms and conditions as may be considered necessary.

# Prescribed Guidelines

## Immovable property

Foreign companies that set up Liaison offices are not permitted by the Reserve Bank Of India [RBI] to acquire immovable property in India for carrying on their activities. **However, they are permitted to take property for office or residence on lease for a duration not exceeding 5 years without seeking permission from RBI.**

***Permission for such a liaison office is valid initially for a period of 3 years and has to be renewed thereafter.***

## Prohibited activities :-

Activities such as

- entering into any contracts with Indian residents,
- trading,
- borrowing funds, etc. **are not permitted.**

In effect, no business should be carried on or revenue generated in India.

All the expenses for the set-up, operation and maintenance of the Liaison office have to be met out of foreign exchange remittances from the foreign company.

# Statutory Requirements and Procedures

- ***Income Tax Issues***

Under Income Tax Act, 1961 a company has to file its Income-tax return irrespective of whether they earn any Income or not.

Liaison office of a body corporate registered outside India is thus required to file its Income-tax return.

Under the erstwhile FERA, Liaison office was permitted to earn interest on Bank Fixed Deposits. However, under FEMA, no such permission is included in the Regulations.

Further, expatriate and Indian resident employee's Income-tax returns are required to be filed and tax has to be withheld on remuneration paid to them.

Further , Permanent Account Number and Tax Deduction Account Number has to be obtained from Income-tax authorities.

# Statutory Requirements and Procedures Contd.....

- ***Annual Filing with RBI***

Every year a certificate from the auditors has to be submitted to the Regional Office of RBI.

The certificate should state that the Liaison office has complied with the terms & conditions stipulated in the letter of approval issued by the RBI and that all the expenses of the Liaison office are met out of inward remittance.

# Statutory Requirements and Procedures Contd.....

## • **Registration under Indian Companies Act**

The Section 592 to 602 of the Indian Companies Act , 1956 apply to the Foreign Companies that establish a business presence in India. Such companies must comply with the provisions of Section 592 of the Indian Companies Act, 1956 with regard to registration with Registrar of Companies within a period of 30 days from date of establishing place of business in India.

### The following documents and information need to be submitted –

- Certified copy of Memorandum and Articles of Association / Charter of the foreign company with certified English translation thereof, wherever necessary.
- Full address of registered/principal office of foreign company.
- Name and address of the person resident in India authorized u/s 592(1)(d) to accept on behalf of the foreign company, any notice or other documents required to be served on the foreign company.
- Full Address of the principal place of business in India.
- List of Director and Secretary of the foreign company.

For certification and translation of documents, the same needs to be in compliance with Rules 16 and 17 of the Companies General Rules and Forms, 1956.

Any changes regarding the documents / information submitted to the ROC must be intimated to the ROC of the State where the office is situated and to the ROC, NCT of Delhi and Haryana in Form No.49 or 52 as applicable.

## • **Procedures for Registration**

1) Filing of accounts

2) The following documents need to be submitted u/s 594 of companies Act-

- A copy of the approval letter issued by the RBI.
- A statement showing receipts and payments duly certified by the person authorized u/s 592(1)(d) of the Companies Act. and the Auditors.
- A statement of company's assets and liabilities in India duly certified by a person authorized u/s 592(1)(d) of the Company's Act and the Auditors.
- A certificate confirming that the liaison office did not carry out any trading, manufacturing or commercial activity or undertook any invoicing of



## Other Operational Aspects

### **Bank account**

Liaison office is allowed to open current account with any authorized dealer.

The following documents are to be submitted:

- A certified true copy of the Memorandum and Articles / Charter of the foreign company with the Certificate of Incorporation.
- Board resolution to open the account together with the names of persons authorized to operate the account.
- Power of Attorney to open the Bank Account.
- Copy of RBI approval.

### **Miscellaneous Matters**

A power of Attorney may be executed in favour of an Indian employee authorizing to carry on the activities in India.

An employment agreement is normally required to be executed between the foreign company and the Country Manager.

It is advisable to obtain Foreign Inward remittance Certificates from Bank.

Obtaining Permanent Account Number and Tax Deduction Account Number from Income-tax authorities.

Registration under the Shops and Establishments Act and

Registration under the Profession Tax Act if required

# Taxability of liaison office of a foreign company in India

## The Act and the Controversy

The taxability, if any, of LOs in India could be said to be broadly governed by Section 9(1)(i) of the Income Tax Act, 1961 (Act), and, Article 5 (on permanent establishment [PE]) read with Article 7 (on business profits) of the relevant Double Tax Avoidance Agreement (DTAA) (in a scenario where the foreign parent is from a country with whom India has entered into a DTAA).

**It is at the assessee's discretion to apply provisions of the Act or the relevant tax treaty, whichever are more beneficial to it.**

As per Section 9(1)(i) of the Act, an LO would be deemed to be liable to tax on its income in India in case it constitutes a 'business connection' of its foreign parent in India. As per Article 5 read with Article 7 of the relevant DTAA, an LO would be taxable in India, in case it constitutes a PE of its foreign parent in India.

**Generally, the tax authorities have been adopting a position that the LO constitutes a PE/ business connection of its foreign parent in India.**

Consequently, any receipt (or part thereof) due to the LO or to its foreign parent from any activity in India have been held as liable to tax in the hands of the LO in India (in certain cases without appropriate allowance for expenses). **This has been contrary to the LO's contention that they are prohibited from carrying on business in India (as per RBI guidelines) and also that no profits are attributable to the activities carried out by them in India**

# Taxability of liaison office of a foreign company in India

## Contd.....

**The judicial precedents on the subject have not rendered adequate certainty to the issue.** Recently, the Authority for Advance Rulings (AAR) in the case of Angel Garment Ltd (287 ITR 341) has held that an LO established with a view to merely undertaking 'purchasing activities' in India (such as collecting information about Indian suppliers, acting as a communication channel between the foreign parent and Indian suppliers etc) cannot be held liable to tax in India, as there is a specific exclusion to this effect prescribed under Section 9(1)(i) of the Act (this ruling was pronounced in a non DTAA scenario). However, the issue as regards what activities can be said to be comprised within the meaning of the term 'operations which are confined to the purchase of goods' (i.e. the specific exclusion laid down in Section 9(1)(i) of the Act) was not raised before the AAR.

### **Few Favourable key precedents :-**

- Special bench ruling of the Delhi Tribunal in the case of Motorola Inc and Others v DCIT (95 ITD 269),
- AAR ruling in the case of Gutral Trading Est. (278 ITR 643),
- the Delhi Tribunal ruling in the case of Western Union Financial Services Inc (101 TTJ 56)
- Special bench ruling of the Delhi Tribunal in the case of IAC v Mitsui and Co Ltd (39 ITD 59).

***To broadly summarize the above rulings, it has been consistently held that an LO cannot be liable to tax in India unless the LO undertakes any commercial or revenue***

# Taxability of liaison office of a foreign company in India Contd.....

## The Controversy

However, **an unfavorable ruling** in the case of **UAE Exchange Centre LLC (268 ITR 9)** should also be kept in perspective, wherein the AAR on specific facts of the case has held that the LO constituted a PE of its foreign parent in India.

## CONCLUSION

Thus to conclude, though there are quite a few judicial precedents in favour of the fact that an LO should not be liable to tax in India, **taxability of LOs still continues to be a litigative proposition.**

**The End**



**Thank You.**

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