



BMC Advisors

Corporate Laws and Intellectual Property Rights Consultants



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SEBI UPDATES

CIRCULAR

IMD/FPIC/CIR/P/2018/46

March 08, 2018.

To,

1. All Foreign Portfolio Investors (through their designated Custodians of Securities)
2. The Depositories (NSDL and CDSL)
3. The Recognized Stock Exchanges

Dear Sir / Madam,

Sub: Separate limit of Interest Rate Futures (IRFs) for Foreign Portfolio Investors (FPIs)

1. Reserve Bank of India, in its Statement on Developmental and Regulatory Policies, released on August 02, 2017, proposed to allocate a separate limit of INR 5,000 crore to Foreign Portfolio Investors (FPIs) for taking long position in Interest Rate Futures (IRFs) in order to facilitate further market development and to ensure that FPIs' access to bond futures remains uninterrupted during the phase when FPI limits on Government securities are under auction.
2. Accordingly, it has been decided to allocate a separate limit of INR 5,000crore to FPIs for taking long position in IRFs. Para 13 (d) of Annexure 1 to SEBI Circular CIR/MRD/DRMNP/35/2013 dated December 05, 2013 and Para 13 (c) of Annexure 1 to SEBI Circular CIR/MRD/DRMNP/11/2015 dated June 12, 2015 stand partially modified to that extent.
3. This limit will be calculated as follows:
 - a. For each interest rate futures instrument, position of FPIs with a net long position will be aggregated. FPIs with a net short position in the instrument will not be reckoned.
 - b. No FPI can acquire net long position in excess of INR 1,800crore at any point of time.
4. For monitoring the limit as mentioned in Paragraph '3' above and in SEBI Circular CIR/MRD/DRMNP/2/2014 dated January 20, 2014, Stock Exchanges, after consulting amongst themselves, shall adhere to the following mechanism:
 - a. Stock Exchanges shall put in place necessary mechanism for monitoring and enforcing limits of FPIs in IRFs
 - b. Stock Exchanges shall aggregate net long position in IRF of all FPIs taken together at end of the day and shall jointly publish/ disseminate the same on their website on daily basis.
 - c. Once 90% of the limit is utilized, Stock Exchanges shall put in place necessary mechanism to get alerts and publish on their websites the available limit, on a daily basis.
 - d. In case, there is any breach of the threshold limit, the FPI/s whose investment caused the breach shall square off their excess position/s within five trading days or by expiry of contract, whichever is earlier.
5. The limits prescribed for investment by FPIs in Government Securities (currently INR 301,500 crore) shall be exclusively available for investment in Government Securities.

This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page "Circular" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

Yours faithfully,

ACHAL SINGH
Deputy General Manager
Tel No.: 022-26449619
Email: achals@sebi.gov.in

IPR UPDATES

No. TMR / Public Notice /2018/ 293

Date: 05-03-2018

PUBLIC NOTICE

It is hereby informed that show-cause hearings fixed inadvertently on 29/03/2018 at Trade Marks Registry, Mumbai in respect of International registrations are cancelled and the same will be reschedule in due course.

(S.M. Togrikar)
Asstt. Registrar of Trade Marks & GI
(Head of Office)

PUBLIC NOTICE

The office of the CGPDTM is organizing 5 National PCT Roving Seminars in cooperation with WIPO and in association with Industry associations from 12th March 2018 to 21st March 2018 as per the programs as mentioned below to share the knowledge about the use of PCT System in protecting the inventions globally. The main objective of these seminars is to provide information to the Indian inventors and applicants about the recent developments in PCT system as well as the benefits of filing of PCT International Applications through the e PCT portal, for Natural persons, small entities and startup companies etc. Besides, the seminar will also focus on the benefits of using of services of Indian Patent Office as Receiving Office (RO), International Searching and International Preliminary Examining Authority (ISA/IPEA)

Mr. John Sandage, Deputy Director General, Patents and Technology Sector, WIPO. Mr. Peter Waring, Head, PCT Technical Cooperation Section, PCT International Cooperation Division, WIPO and Ms. Anjali Aeri, Counsellor, PCT Office Services Section, PCT International Cooperation Division, WIPO along with IPO officials shall be actively participating in the seminar and sharing their views and benefits of PCT filing.

Date	Place	Organizing Industry	Local Coordinators/Contact	Venue
March 12	Mumbai	CII	Shailendra Kumar; E: kumar.shailendra@cii.in; M:8106585839/7905774258	Hotel Taj Mahal Palace
March 14	Chennai	ASSOCHAM	Ms. Uma S Nair E:umasnair@assochem.com M: 9036333975	Hotel Crown Plaza
March 16	Hyderabad	CII	Shailendra Kumar; E: kumar.shailendra@cii.in; M:8106585839/7905774258	Hotel Novotel
March 19	Chandigarh	FICCI	Mr. Gurbinder Singh, FICCI Head - Advisory Council Email: gb.singh@ficci.com Phone: 9876577000	National Institute for Technical teachers training & research (NITTTR)
March 21	Delhi	ASSOCHAM	Mohd Nahid Alam E: nahid.alam@assochem.com M:9953072076, M:9990720770	Hotel Claridges,

Interested users, stakeholders, applicants are invited to attend the same at the respective locations and contact the local coordinators as mentioned above. No registration fee is charged.

For any clarification, you may contact Ms G.B. Bimi Assistant Controller of Patents and Designs, Incharge Receiving Office, Patent Office Delhi at Email bimigb.ip@nic.in or Dr Rajesh Dixit, Deputy Controller of Patents and Designs, Incharge ISA, Patent Office Delhi at Email dixit.rajesh@nic.in

Sd/
Dr.K.S.Kardam
(Senior Joint Controller of Patents and Designs)

TMR/ADMN/2017-18/521

Date: 08-03-2018

PUBLIC NOTICE

It is informed that due to Administrative reasons, the show-cause hearing fixed on 19/03/2018 at Trade Marks Registry, Chennai are cancelled and the same will be rescheduled in due course.

(Chinnaraj G. Naidu)
Assistant Registrar of Trade Marks & GI
Head of Office

GST UPDATES

Circular No. 35/9/2018-GST

F. No. B-1/20/2016-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit

Room No. 146G, North Block,
New Delhi, 5th March 2018

To,

The Principal Chief Commissioners/Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Joint Venture ---taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV-reg

I am directed to say that in the Service Tax regime, CBEC vide Circular No. 179/5/2014 - ST issued from F. No. 179/5/2014-ST dated 24 September 2014 had clarified that if cash calls are merely transaction in money, then they are excluded from the definition of service provided in Section 65B (44) of the Finance Act, 1994. Whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case. The Circular clarified that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture(JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax. The Circular further stated that JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore, officers in the field formations were advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each JV agreement.

2. In the Service Tax Law, service was defined as an activity carried out by a person for another for consideration [Section 65B (44) of the Finance Act 1994]. Explanation 3 to the said definition stated than an unincorporated association or a body of persons as the case may be, and a member thereof shall be treated as distinct persons.

3. GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of "business" in section 2(17) of CGST Act states that "business" includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply of goods by any

unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

4. Therefore, the law with regard to levy of GST on service supplied by member of an unincorporated joint venture (JV) to the JV or to other members of the JV, or by JV to the members, essentially remains the same as it was under service tax law. Thus, it is clarified that the clarification given vide Board Circular No. 179/5/2014 – ST dated 24.09.2014 *ibid* in the context of service tax is applicable for the purpose of levy of GST also. It is reiterated that the question whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case. ‘Cash calls’ are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Taxability of cash calls can be further explained by the following illustrations:

Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.

Illustration B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of ‘ST/GST’ for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing ‘service’ within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,
Harsh Singh
Technical Officer (TRU)
Email: harshsingh.irs@gov.in
Tel: 011-23095543

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise and Customs
Notification No. 12/2018 - Central Tax

New Delhi, the 7th March, 2018

G.S.R.....(E). - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely Central Goods and Services Tax (Second Amendment) Rules, 2018:-

For complete stated amended Rules, please refer below link:

http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-12-2018-central_tax-English.pdf

[F. No. 349/58/2017-GST]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R 610 (E), dated the 19th June, 2017 and last amended vide notification No. 3/2018-Central Tax, dated the 23rd January, 2018, published vide number G.S.R 52(E), dated the 23rd January, 2018.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise and Customs
Notification No. 13/2018 - Central Tax

New Delhi, the 7th March, 2018

G.S.R.... (E).- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 6/2018 - Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 55(E), dated the 23rd January, 2018, except as respects things done or omitted to be done before such rescission.

[F. No. 349/58/2017-GST]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

DGFT UPDATES

(To be published in the Gazette of India Extraordinary Part-II, Section-3, Sub- Section (ii))

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan

Notification No. 52/2015-2020

New Delhi, Dated: 07th March, 2018

Subject: Amendment in Para 2.17 of the Foreign Trade Policy 2015-20 on "Prohibition on direct or indirect import and export from/to DPRK (Democratic People`s Republic of Korea) in terms of UNSC resolutions concerning DPRK.

S.O. (E): In exercise of the powers conferred by Section 5 and Section 14A of the Foreign Trade (Development and Regulation) Act, 1992, as amended, read with para 1.02 of the Foreign Trade Policy (FTP) 2015-20, the Central Government hereby makes amendment to the Paragraph 2.17 of FTP 2015-20 as notified vide Notification No. 35/2015-20 dated 18th October 2017, with immediate effect. Consequently, the Appendix I of FTP 2015-20 also stands amended.

2. Paragraph 2.17 of the FTP 2015-20 stands substituted as under: **(changes made are in bold letters, except bold letters used in Para heading and sub- headings).**

"2.17 "Prohibition on direct or indirect import and export from/to Democratic People`s Republic of Korea (DPRK)

"Prohibition on export:

(A) The direct or indirect supply, sale, transfer or export of the following items to Democratic People`s Republic of Korea (DPRK) is prohibited:-

- (i) Any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile system as defined for the purpose of the United Nation Register on Convention Arms, or related material including spare parts;
- (ii) All arms and related materiel, including small arms and light weapons and their related materiel;
- (iii) All items, materials, equipment, goods and technology as set out in the United Nations Security Council (UNSC) and International Atomic Energy Agency (IAEA) documents, namely,

- 1. S/2006/853*;
- 2. S/2006/853/ Corr.1;
- 3. Part B of S/2009/364;
- 4. Annex III of Resolution 2094 (2013)
- 5. S/2016/1069;
- 6. Annex A to INFCIRC/254/Rev.12/Part1 (IAEA documents);
- 7. Annex to INFCIRC/254/Rev.9/Part2 (IAEA documents);

8. S/2014/253;
 9. S/2016/308;
 10. Annex III of Resolution 2321 (2016); and
 11. Other items, materials, equipment, goods and technology, as determined by the central Government, which could contribute to DPRK's nuclear related, ballistic missile-related or other weapons of mass destruction related programmes;
- (iv) luxury goods, including, but not limited to, the items specified in Annex IV of Resolution 2094 (2013), Annex IV of Resolution 2270 (2016) and Annex IV of Resolution 2321 (2016);
- (v) items as determined by the central government, except food or medicine, that could directly contribute to the development of the Democratic people's Republic of Korea's operational capabilities of its armed forces. This measure is subject to the exemptions set out in paragraph 8 (A) and (b) of Resolution 2270 (2016);

Prohibition on Import

(B) The direct or indirect procurement or import from DPRK, of items, whether or not originating in DPRK, covered in sub-paragraphs (A)(i), (A)(ii), (A)(iii) and (A)(v) above is prohibited.

Sectoral Prohibitions (Export)

(C) The direct or indirect supply, sale, transfer or export of the following items to DPRK is prohibited:

- (i) new helicopters and **new or used** vessels, except as approved in advance by the Committee on a case-by-case basis;
- (ii) aviation fuel, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, and kerosene-type rocket fuel. This measure is subject to the provisions of paragraph 31 of Resolution 2270 (2016) and paragraph 20 of Resolution of 2321 (2016);
- (iii) condensates and natural gas liquids;
- (iv) refined petroleum products. This measure is subject to the **limits, exceptions** and procedures set out in **paragraph 5 of Resolution 2397 (2017)**;
- (v) crude oil. This measure is subject to the **limits**, exemptions and procedures set out in **Paragraph 4 of Resolution 2397 (2017)**;
- (vi) **all industrial machinery [Chapter 84 and 85 of ITC(HS)], transportation vehicles [Chapter 86 to 89 of ITC(HS)], and iron, steel, and other metals (Chapter 72 to 83 of ITC(HS))**. This measure is subject to the exemptions set out in **Paragraph 7 of Resolution 2397 (2017)**;

Sectoral prohibitions (import)

- (D) The direct or indirect procurement or import from DPRK, of the following items is prohibited:
- (i) coal, iron and iron ore. This measure is subject to the exemptions and procedures set out in paragraph 8 of Resolution 2371 (2017);
 - (ii) gold, titanium ore, vanadium ore, and rare earth minerals;
 - (iii) copper, nickel, silver and zinc;
 - (iv) statues, unless the Committee approves on a case-by-case basis in advance;
 - (v) seafood (including fish, crustaceans, mollusks, and other aquatic invertebrates in all forms). This measure is subject to the exemptions, **clarifications** and procedures set out in paragraph 9 of Resolution 2371 (2017) and paragraph 6 of Resolution 2397 (2017);
 - (vi) lead and lead ore. This measure is subject to the exemptions and procedures set out in paragraph 10 of Resolution 2371 (2017);

- (vii) textiles (including but not limited to fabrics and partially or fully completed apparel products). This measure is subject to the exemptions and procedures set out in paragraph 16 of Resolution 2375 (2017);
- (viii) food and agricultural products [Chapters 12, 08, 07 of ITC (HS)], machinery [Chapter 84 of ITC (HS)], electrical equipment [Chapter 85 of ITC (HS)], earth and stone including magnesite and magnesia [Chapter 25 of ITC (HS)], wood [Chapter 44 of ITC (HS)], and vessels [Chapter 89 of ITC (HS)]. These measures are subject to the procedures set out in paragraph 6 of Resolutions 2397 (2017).

Explanation.-

- a) UNSC means the United Nations Security Council;
- b) IAEA means the International Atomic Energy Agency;
- c) Committee means the Committee of the UNSC set up in terms of paragraph 12 of Resolution 1718 (2006)
- d) Resolution, as the case may be, means the UNSC Resolutions under Chapter VII of the Charter of the United Nations on Democratic People's Republic of Korea, namely, 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2231 (2016), 2356 (2017), 2371 (2017), 2375 (2017) and 2397 (2017)"

3. Effect of the notification

This notification seeks to update the Para 2.17 of the Foreign Trade Policy 2015-20, on imports and exports to Democratic People's Republic of Korea (DPRK), to account for UNSC Resolutions under Chapter VII of the Charter of the United Nations on Democratic People's Republic of Korea, namely, 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2231 (2016), 2356 (2017), 2371 (2017), 2375 (2017) and 2397 (2017).

(Alok Vardhan Chaturvedi)
Director General of Foreign Trade
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DESTINATION FOR PERFECTION

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