



*DPIIT clarifies on NRI's downstream investments
| Remuneration of non-executive and
independent directors in case of no profits or
inadequate profits | Central Scrutiny Centre to
be established*

INSIGHTS

March 20, 2021

Dear All,

Certain important changes have been introduced in relation to the Companies Act, 2013 and the Foreign Exchange Management Act, 1999, as follows:

1. Investment made by an Indian company which is owned and controlled by non-resident Indians (**NRIs**) on a non-repatriation basis is not to be considered for calculation of indirect foreign investment;
2. Remuneration to non-executive directors including independent directors in case of no profits or inadequate profits;
3. Establishment of a Central Scrutiny Centre (**CSC**) for carrying out scrutiny of Straight Through Processes (**STP**) e-forms filed by the companies.

A. Downstream investments made by NRIs

The Department of Promotion of Industry & Internal Trade (**DPIIT**) has clarified that investment made by an Indian company which is owned and controlled by NRIs on a non-repatriation basis shall not be considered for calculation of indirect foreign investment. The clarification has come in light of the position that investments by NRIs on a non-repatriation basis under Schedule IV of the FEM (Non-Debt Instruments) Rules, 2019 (**NDI Rules**) are deemed to be domestic investments at par with the investments made by residents.

The much needed clarification has been issued vide Press Note No. 1 (2021 Series) dated March 19, 2021 ([available here](#)), and the change will take effect from the date of notification under the Foreign Exchange Management Act, 1999.

B. Remuneration to non-executive directors and independent directors in case of companies having no profits or inadequate profits

The Ministry of Corporate Affairs (**MCA**) has notified the changes introduced by the Companies (Amendment) Act, 2020, to effect the following:

- An independent director may receive remuneration, if a company has no profits or inadequate profits in accordance with Schedule V of the Companies Act, 2013;
- If a company fails to make profits or makes inadequate profits in a financial year, any non-executive director of such company, including an independent director, shall be paid remuneration in accordance with Schedule V of the Companies Act, 2013.

The changes seems to have been implemented with the intent to appropriately compensate the independent directors and non-executive directors, even if the companies are loss making or their profits are inadequate.

In accordance with the aforementioned notification, MCA has amended Schedule V of the Companies Act, 2013, and has incorporated the remuneration limits applicable for non-executive director or an independent director, in case of companies having no profit or inadequate profit, as follows:

Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in rupees) in case of non-executive director or an independent director
Negative or less than 5 crores	12 lakhs
5 crores and above but less than 100 crores	17 lakhs
100 crores and above but less than 250 crores	24 lakhs
250 crores and above	24 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

The afore-mentioned changes have been introduced by notifying the relevant provisions of the Companies (Amendment) Act, 2020 vide MCA notification dated March 18, 2021 ([available here](#)), and notification amending Schedule V, dated March 18, 2021 ([available here](#)).

C. Establishment of the Central Scrutiny Centre (CSC)

The Central Government has established a CSC which shall be responsible for carrying out scrutiny of STP e-forms filed by the companies under the Companies Act, 2013 and the rules made thereunder. Findings regarding the aforementioned e-forms, wherever required, shall be forwarded to the concerned jurisdictional RoC for further necessary action. The CSC shall function under the administrative control of the e-governance Cell of the MCA and shall be located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050. The CSC has been established vide MCA notification dated March 18, 2021 ([available here](#)) which shall come into force from March 23, 2021.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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