

## ERGO

*Analysing developments impacting business*

### UNIFORMITY IN THE LATE SETTLEMENT FEE ACROSS FOREIGN EXCHANGE TRANSACTIONS

4 October 2022

#### **Background**

On 30 September 2022, the Reserve Bank of India (RBI) issued a circular (LSF Circular) to bring about uniformity in the imposition of a Late Submission Fee (LSF) for reporting delays across foreign investment, external commercial borrowings (ECB) and overseas investment.

The concept of LSF was introduced by the RBI vide notification dated 7 November 2017, wherein the payment of LSF was provided as an option for applicants to regularize reporting delays in relation to foreign investment matters, without undergoing the cumbersome process of compounding. Initial notification provided that where a person responsible for making filings and submissions under the Foreign Exchange Management Act, 1999 (FEMA), fails to make the same, such reporting can be made with a late submission fee in the manner as directed by the RBI.

Formerly, the FEMA regulations only provided for compounding as the sole remedy for regularizing a delayed reporting, the process of which was extremely time consuming. With the introduction of LSF, an additional option was made available for transactions relating to foreign investments undertaken on or after 7 November 2017. By easing the process for regularization, LSF paved the way for allowing authorities to deal with procedural delays through a speedier and less cumbersome process.

This option was subsequently extended to ECB related matters with effect from 16 January 2019 and to overseas investment related matters with effect from 22 August 2022. However, despite its enhanced coverage, the procedure was not uniform to determine the applicable LSF amount. While the calculation of LSF in foreign investment related matters was based on the percentage of the amount involved in the reporting, the determination of the same for ECB related matters was a fixed amount depending upon the type of return or form to be submitted. Moreover, the concept of LSF was only recently introduced for overseas investment related matters wherein its determination was separately provided for under the Foreign Exchange Management (Overseas Investment) Directions, 2022.

#### **Analysis**

With the issuance of the LSF Circular, the RBI has brought uniformity in the determination of LSF across a variety of cross border transactions. Further, it has also provided for such facility to be availed of for regularizing delayed submissions to be made under the earlier FDI regulations and the revised ODI regulations for up to a period of three years from the due date of such submission.

It also provides that in case a person responsible for any submission or filing does not make such reporting within the specified time, then such person would be liable for penal action under the provisions of the FEMA. However, it is important to note that the option of LSF is only an additional option for regularizing reporting delays, while the option of compounding continues to exist. The RBI in its FAQs dated 7 May 2018, clarified that the payment of LSF is an additional facility for regularizing reporting delays without undergoing the compounding procedure. Therefore, the option for compounding is always available even if one decides to not avail of the option to pay LSF.

Separately, the LSF Circular essentially brings uniformity in the maximum LSF amount applicable which would be now capped at 100 per cent of amount involved in the delayed reporting. Basis the same, there could be a possible increase in the amount of the LSF payable in terms of foreign investment related matters which were earlier capped at 10 million and for ECB related matters which was earlier capped at INR 100,000 per year of non-compliance.

### **Conclusion**

The LSF Circular is a positive initiative to standardize the determination of the settlement fee in regularizing reporting delays across a variety of cross border transactions. However, while the new mechanism introduces such uniformity, one should take note of the possible increase in the amount of LSF payable for foreign investment related and ECB related matters. Moreover, while the option of LSF does provide for a quicker resolution, the option of compounding continues to exist for the same. Nevertheless, such uniformity introduced across all cross-border transactions will certainly ease the process for regularizing such procedural delays and is a welcome step to facilitate and encourage inbound and outbound foreign exchange investments.

- *Moin Ladha (Partner) and Anusha Rao (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

*We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).*