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FACULTY OF COMMERCE AND MANAGEMENT

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NAME OF FACULTY: DR. PALASH BAIRAGI

LECTURE-26

TAX PLANNING IN CASE OF FOREIGN COLLABORATIONS AND JOINT VENTURE

There are two types of foreign collaborations:

a) Financial collaboration (foreign equity participation) where foreign equity alone is involved .

b) Technical collaboration (technology transfer) involving licensing of technology by the foreign collaborator on due compensation. -

There are two approving authorities

1) Reserve Bank of India, and

2) Department of Industrial Development in the Ministry of Industry, Government of India.

Government Policy

The Government of India's policy on foreign private investment is based mainly on the Approach adopted in 1949. The basic policy is to welcome foreign private investment on a selective basis in areas advantageous to the Indian economy. The conditions under which foreign capital is welcome are as follows:

a) All undertakings (Indian or foreign) have to conform to the general requirements of the Governments Industrial Policy.

b) Foreign enterprises are to be treated at par with their Indian counterparts.

c) Foreign enterprises would have the freedom to remit profits and repatriate capital subject to foreign exchange considerations.

The Industrial Policy 1991, is based on the view that while freeing Indian Industry from official controls, opportunities for promoting foreign investments in India should also be fully exploited. It is felt that foreign investment would bring attendant advantages of technology transfer, marketing expertise, introduction of modern managerial techniques and new possibilities for promotion of exports.

Technical Collaboration

The Industrial Policy, 1991, also provides that equity collaboration need not necessarily be accompanied with technical collaborations. The salient features of the Policy relating to Foreign Technology Agreements are outlined below:

Paragraph 39C - Foreign Technology Agreements.

Standard Conditions Attached to Approvals for Foreign Investment & Technology Agreements

1) The total non-resident shareholding in the undertaking should not exceed the

2) The Loyalty will be calculated on the basis of the net ex-factory sales price of the product, exclusive of excise duties, minus the cost of the standard bought-out components and the landed cost of imported components, irrespective of the source of procurement, including ocean freight, insurance, customs duties, etc. The payment of royalty will be restricted to the licensed capacity plus 25% in excess thereof for such items requiring industrial licence or on such capacity as specified in the approval letter. This restriction will not apply to items not requiring industrial licence. In case of production in excess of this quantum, prior approval of Government would have to be obtained regarding the terms of payment of royalty in respect of such excess production.

B) The royalty would not be payable beyond the period of the agreement if the orders had not been executed during the period of agreement. However, where the orders themselves took a long time to execute or were executed after the period of agreement, then in such cases the royalty for an order booked during the period of agreement would be payable only after a Chartered Accountant certifies that the orders in fact were firmly booked and execution began during the period of agreement and the technical assistance was available on a continuing basis even after the period of agreement.

C) No minimum guaranteed royalty would be allowed.

3) The lump-sum shall be paid in three instalments as detailed below, unless otherwise stipulated in the approval letter:-

i. First 1/3rd after the approval for collaboration proposal is obtained from Reserve Bank of India and collaboration agreement is filed with the Authorised Dealer in Foreign Exchange.

ii. Second 1/3rd on delivery of know-how documentation.

iii. Third and final 1/3rd on commencement of commercial production, or four years after the proposal is approved by Reserve Bank of India and agreement is filed with the Authorized Dealer in Foreign Exchange, whichever is earlier. The lump-sum can be paid in more than three instalments, subject to completion of the activities as specified above.

1) All remittances to the foreign collaborator shall be made as per the exchange rates prevailing on the date of remittance.

2) The applications for remittances may be made to the Authorised Dealer in Form A2 with the undernoted documents:-

a) A No Objection certificate issued by the Income-tax authorities in the standard form or a copy of the certificate issued by the designated bank regarding the payment of tax where the tax has been paid at a flat rate of 30% to the designated bank.

b) A certificate of the Chartered Accountant in Form TCK/TCR (depending upon the purpose of payment)

c) A declaration by the applicant to the effect that the proposed remittance is strictly in accordance with the terms and conditions of the collaboration approved by RBI/Government.

3) The agreement shall be subject to Indian Laws.

4) A copy of the foreign investment and technology transfer agreement signed by both the parties may be furnished to the following authorities:-

a) Administrative Ministry/Department.

b) Department of Scientific and Industrial Research, New Delhi.

c) Concerned Regional Officer of Exchange Control Department, RBI.