

Flash Alert

20 January 2021



FITTA Regulations 2077 & Directives of Permanent Establishment 2077

Foreign Investment & Technology Transfer Regulations 2077

Nepal Government, within the rights conferred by section 51 of the Foreign Investment & Technology Transfer Act 2075 (FITTA), has issued the Foreign Investment & Technology Transfer Regulations, 2077 on 11 January 2021. The regulations provides clarity on the procedures for applying for approval of foreign direct investment from the approving authorities (DOI & IBN) and the documents to be submitted along with the application including the timeline for remitting the committed investments in the Nepal entity. Procedures for setting up a branch office with the approval of the approving authority and obtaining FDI approval for industries set up in provinces has been specified.

The regulations have made arrangements to categorize foreign investors as general, special, and most special foreign investor and issue identification cards to their authorized representatives. In addition, the visa facilities to be granted to foreign investors has also been linked to the amount of investments made in Nepal.

The role of the approving authority in coordinating and facilitating the acquisition of land for specified industries has been stipulated. Thresholds have also been specified for reinvestments from profits earned by a foreign investor in its own entity and other entities and ceilings on repatriation of royalty and other fees has been stipulated under Rule 5 under local and export sales and net profits from local and export sales.

Foreign investors shall be required to provide details of sales of assets, transfer of rights or assets or change in ownership or beneficial ownership within 30 days of such transaction to the approving authority with the main objective of applying income taxes on the transfer of ownership and capital gains tax on the transaction.

For summary of the regulations [click here](#)

[PKF Comments](#)

These regulations have made an effort to segregate foreign investors on the basis of the value of investments made in Nepal and link the facilities entitled there against. It has also provided clarify on the procedures and the documents required for seeking approval of foreign investment, the timeline for injecting the investment and repatriation of profits and investment. The ceiling prescribed for repatriation of royalty is to bring uniformity on the royalty rates and to encourage exports sales.

Directives on Permanent Establishment 2077

The Inland Revenue Department has issued the much awaited 'Directives on Permanent Establishment 2077' on 19 January 2021. The directive has been prepared to provide clarity and simplify the understanding of the provisions relating to permanent establishment (PE) in the Income Tax Act 2058 and Income Tax Rules 2059.

The Directives has been segregated into 11 Chapters which includes the basis for determination of PEs including the Agency PE, Construction PE, Fixed Place PE, and Service PE.

Chapter 8 provides clarify on the provisions of the DTAA and the PE whereas Chapter 10 lays down timing and procedures for the registration of the PE in Nepal and Chapter 11 addresses the taxation on the income of the PE including allocation of assets, income and expenditure and the treatment of the PE as an independent entity for tax purposes from its main company.

More than 30 examples are provided for the understanding of various transactions and scenarios relating to the establishment of the PE which would be very useful in determining the basis of PE and its taxability.

For summary of the directives [click here](#)

PKF Comments

The Directives have been issued at an appropriate time and would provide clarity on establishment of various PEs in Nepal and its registration including determination of the taxable income and taxes thereon.