

Overseas Direct Investment by a Resident Individual

As highlighted in our previous article, outbound investments by Indian have grown considerably in the recent years so as to widen customer base and have access to global markets. Indian entities were allowed to make such overseas investments within the permissible guidelines. In order to further provide flexibility to resident individuals, w.e.f. 5th August, 2013, RBI permitted investment by resident individuals in overseas entities subject to terms and conditions as laid out briefly in this article.

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CEILING ON INVESTMENT

- The total remittances for permissible capital and current account transactions should be within the overall ceiling prescribed for resident individuals under LRS from time to time. Presently, the ceiling prescribed is USD 250000 per financial year (April to March). The investment made out of the balances held in EEFC / RFC account shall also be restricted to the limit under LRS.
- Hence, the investment amount in an overseas entity should be within USD 250000 per financial year.

GENERAL PROHIBITIONS

- Resident Individual cannot make any direct investment in an overseas entity engaged in real estate business or banking business or in the business of financial services activity.
(Real Estate means meaning buying and selling of real estate or trading in Transferable Development Rights but does not include development of townships, construction of residential/commercial premises, roads or bridges.)

POINTS FOR CONSIDERATION

- The overseas JV/WOS should be engaged in a bonafide business activity.
- The resident individual should not be on the RBI's exporter caution list or list of defaulters to banking system or under investigation.
- **The resident individual should route all the transactions relating to the overseas JV/WOS through only one branch of an AD Bank.** No foreign account should be used for payments to the overseas entity directly.
- The overseas JV/WOS shall not be located in countries identified by the Financial Action Task Force as "non co-operative countries and territories".
- The overseas JV / WOS, to be acquired / set up by a resident individual shall be an **operating entity only** and no step down subsidiary is allowed to be acquired or set up by the JV /WOS.
- Financial commitment by resident individual other than by equity and compulsorily convertible preference shares is prohibited. The resident individual cannot provide loan or guarantee.

For the purpose of making further investment, **the valuation of shares of the overseas JV/WOS shall be made by a Chartered Accountant or a Certified Public Accountant.** However, if the investment is more than USD 5 million, the valuation of the shares shall be made by a Category I Merchant Banker registered with SEBI or an Investment Banker / Merchant Banker outside India registered with the appropriate regulatory authority in the host country.

REPORTING COMPLIANCES AND OBLIGATIONS ON RESIDENT INDIVIDUAL

ONE TIME

- ✓ **Part I of Form ODI** has to be submitted to the AD Bank within 30 days of remittance duly supported by the documents listed as follows:
 - Incorporation Certificate of the overseas entity
 - Memorandum of Association
 - Form A2 and Declaration
 - Valuation Report, if applicable
 - Any other requirements of the AD bank
- ✓ Resident individual has to receive share certificates or any other documentary evidence of investment in the foreign entity as an evidence of investment and submit the same to the designated AD within 6 months from the remittance date.

RECURRING

- Submit Annual Performance Report of overseas entity to the RBI through AD Bank by 31st December
- If the individual has made an investment in the overseas JV /WOS alongwith an Indian Party, then Annual Return on Foreign Liabilities and Assets should be filed by 15th July. An overseas JV/WOS solely formed by individuals need not file the same.
- Any alteration in shareholding pattern of the overseas JV /WOS may be reported to the designated AD within 30 days of such alteration.

REPATRIATION OF DUES FROM INVESTEE COMPANY

- Resident individual shall repatriate to India all dues viz. dividends, royalty, technical fees, etc. within 60 days of falling due.

DISINVESTMENT BY RESIDENT INDIVIDUAL

- Disinvestment by a resident individual shall be allowed after one year from the date of making first remittance for setting up or acquiring the overseas JV /WOS.
- The disinvestment proceeds shall be repatriated to India immediately and in any case not later than 60 days from the date of disinvestment.

- The disinvestment by the resident individual may be reported by the designated AD to the RBI in Form ODI Part IV within 30 days of receipt of disinvestment proceeds.
- No write off shall be allowed in case of disinvestment by the resident individual.

CERTAIN IMPORTANT PROVISIONS OF INDIAN TAX LAW

- **Disclosure in Indian Income tax return**

The Resident Individual should disclose its investment in the overseas entity in the “Foreign Assets Schedule” in the Income Tax Return.

- **Transfer Pricing**

Transfer pricing regulations of India may become applicable if the Resident Individual has control and participation in the overseas JV/WOS. Therefore any transactions between the Resident Individual and overseas JV /WOS will be subject to transfer pricing regulations of India and adherence to the arms length principle and reporting obligations will be required.

GLOSSARY

AD	Authorised Dealer
EEFC	Exchange Earners’ Foreign Currency Account
JV	Joint Venture
LRS	Liberalised Remittance Scheme
LLP	Limited Liability Partnership
ODI	Overseas Direct Investment
RBI	Reserve Bank of India
RFC	Resident Foreign Currency Account
WOS	Wholly Owned Subsidiary

1st April, 2020

Disclaimer:

The information contained in this write up is to provide a general guidance to the intended user. The information is based on our interpretation of various prevailing laws, rules, regulations, pronouncements as on date mentioned below. The information should not be used as a substitute for specific consultations. The information has been provided in simplified manner for general reference of the public which can lead to interpretation not intended under law. Hence, we recommend that professional advice is sought before taking any action on specific issues before entering into any investment or financial obligation based on this Content. No part of this document should be distributed or copied by anyone without express written permission of the publisher.