Is One Person Company Suitable For NRIs?

One Person Company (OPC), as the name suggests, is a type of company having only one individual as its member and the same individual can also be the Director of the Company. This has been in highlight since Union Budget 2021 as Non Resident Indians (NRIs) are also eligible to incorporate an OPC making it easier for a fresh class of foreign investors to invest in India. This concept has been prevalent globally in countries like USA, UK, Singapore, etc. One of the biggest advantages of an OPC is that it can be incorporated by a single person and does not have any minimum requirement of members as is required in other forms of entities like a Private Limited Company or LLP. An OPC also enjoys a lot of exemptions and relaxations from the stringent compliances under the Companies Act, 2013.

WHO CAN FORM AN OPC?

- Indian Citizen resident in India
- NRI staying at least 120 days in India during the immediately preceding financial year.

Foreign nationals are not eligible to incorporate an OPC.

SALIENT FEATURES

- Separate Legal Entity with perpetual succession
- Member and nominee should be natural individuals
- Limited liability as compared to Sole Proprietorship
- One Member, Minimum One Director
- Can be converted into Private or Public Limited Company any time without any threshold limits for compulsory conversion
- Relaxation from certain compliances under Companies Act, 2013

RESTRICTIONS

- One individual can incorporate only one OPC or become nominee in only one OPC
- No Minor can become a member or nominee in OPC nor can they hold beneficial interest in the shares of OPC
- OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate

FEMA PROVISIONS

- NRIs can invest on non-repatriation basis as well as repatriation basis in OPC.
- **Investment on Non-Repatriation basis** is treated at par with domestic investment. Therefore, FEMA pricing guidelines and reporting compliances are not applicable at the time of investment. The share sale proceeds have to be credited to NRO Account only and can be remitted abroad presently under One Million Dollar Scheme after reporting formalities. Certain prohibited sector under this mode includes agricultural, plantation activities, specified real estate business etc.
- **Investment on Repatriation basis** will require compliance with sectoral caps and conditions, FEMA pricing guidelines and reporting compliance. Prohibited sectors include lottery, gambling, specified real estate business etc.

TAXATION

The tax structure for OPC is the same as in case of Private Limited Company. As against the slab rates applicable to individual which goes as high as 42.74%, the corporate tax rates range from 17.16% to 34.94% depending upon various conditions.

Dividend from OPC shall be taxable in India for the shareholder. NRI shareholder can avail treaty benefits on dividend income.

OUR COMMENTS

With certain key advantages of OPC namely limited liability, perpetual succession, concessional corporate tax rates in India, NRIs looking to invest in India now need to evaluate OPC along with other modes of entities such as LLP to decide the most optimum structure on a case to case basis.

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GBCA & Associates LLP

Chartered Accountants

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