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Best Investment Tool For NRIs

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Sameer Mittal - 21 October 2019

Foreign investment plays a very important role in Indian economy, not only does it help the country with its need to capital (debt free), but also equips the companies with better technical know-how, high level of governance, transparency and better management. India being an economy with lower rates of wages, big labor market, tax incentives, liberal government policies has been an apple of eye for foreign investment.

Investments By NRIs

Non Resident Indians may make investment in the Indian capital market in the following forms:

- Foreign Direct Investment (Schedule 1)

- Foreign Portfolio Investment in listed companies (Schedule 3)

- Non Repatriable Investment (Schedule 4)

- Other Capital Instruments (Schedule 5)

- Limited Liability Partnerships (Schedule 6)

- Investment Vehicle (Schedule 8)

- Depository Receipts (Schedule 9)

- Indian Depository Receipt or IDR (Schedule 10)

Foreign Direct Investment:

As per Transfer or issue of Security by a Person Resident outside India or TISPRO under Foreign Exchange Management Regulations, Foreign Direct Investment (FDI) implies an investment made by a resident outside India in the capital instruments (including equity shares, compulsorily convertible debentures, compulsorily convertible preference shares, convertible notes and warrant and partly paid up shares) of an unlisted Indian company or investment exceeding 10 per cent or more in the post issue capital instruments of a listed entity.

The NRI's are permitted to invest in the capital instruments of the Indian entity. However, a person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan and hence cannot purchase capital instruments without the prior government approval.

FDI can be segregated into the investment made under the (a) Automatic route: where no government approval is required before investing; (b) Government route: where prior approval of the nodal ministry is required before investing. The government has prescribed lottery, gambling/chit funds, nidhi companies, trading in transferable development rights, tobacco business and sectors not yet open for private sector as the prohibited sectors and non FDI can be received in these categories.

Further in certain sectors like broadcasting, printing, retail trading, agriculture, power exchange etc. Government has laid down certain sectoral caps as well as the performance linked conditions for receiving FDI. The foreign investments under these sectors cannot exceed the sectoral cap prescribed by the Government and are required to adhere to the conditions imposed.

Repatriation & Non Repatriation:

FDI when made on repatriation basis is covered under schedule 1 OF TISPRO and is subject to the sectoral caps and other conditions prescribed by RBI. However, when the investment is made on repatriation basis, the same is covered under schedule 4 of TISPRO and is treated as domestic investment. (An investment is deemed to be made on non repatriation basis when the sale proceeds of the investment are allowed to be taken outside India, after the payment of applicable taxes.)

Mode Of Payment:

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ Escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Reporting Requirement:

The Indian Company is required to comply with the following conditions on the receipt of FDI:

- Issue the capital instruments within 60 days of the receipt of money

- In case the capital instruments are not issued within 60 days then the company is liable to pay an interest to the investor. In such a case prior approval of RBI will be required for the payment of interest to the investor

- File form FCGPR within 30 days from the date of issue of capital instruments along with the valuation report, KYC of the investor, compliance certificate and other documents

- File annual return of foreign liabilities and assets to the RBI before 15th July, each year

Exit Option:

The investors can exit get an exit through buy back by the investee company or at the time of public listing of the investee company, buy out of the shares held by the NRI by the promoters or other interested person, winding up of the investee company.

Permissible Remittances:

Dividends on equity shares / CCPS and Interest on CCDs are freely repatriable (net of taxes). Further the sale proceeds (net of taxes) of the capital instruments may be remitted outside India or may be credited to the NRE/ FCNR(B) of the person concerned.

It is advisable that the NRIs shall strategise their investments before investing and shall conduct a good study of the prospects of the company and shall align the exit options accordingly.

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