

**J B NAGAR CPE STUDY CIRCLE  
OF  
WIRC**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

**PRESENTATION  
ON  
INVESTMENT OPPORTUNITIES IN INDIA  
FOR NRI /OCI**

**17<sup>TH</sup> JUNE 2023**

**BY**

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# INVESTMENT IN INDIA BY NRI / OCI

## EQUITY INSTRUMENTS

## DEBT INSTRUMENTS

### Repatriation Basis

Schedule – I (FDI)  
Equity Instruments

Schedule – III  
Foreign Portfolio  
Investments(FPI)

Schedule – VI  
Capital in LLP

### Non Repatriation Basis

### Schedule – IV

- Equity Instruments in Pvt companies
- Unit of Mutual Fund with > 50% in Equity
- Convertible Notes in Start-Ups
- Capital contribution in LLP

- Proprietorship
- Partnership Firm

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# DEBT INSTRUMENTS

## REPATRIATION BASIS

- a) GOVERNMENT DATED SECURITIES, TREASURY BILLS, UNITS OF DOMESTIC MUTUAL FUNDS WITH LESS THAN OR EQUAL TO 50% OF INVESTMENT IN EQUITY
- b) BONDS ISSUED BY PSU, INDIA
- c) BONDS ISSUED BY INFRASTRUCTURE DEBT FUNDS
- d) LISTED NON CONVERTIBLE / REDEEMABLE PREFERENCE SHARES OR DEBENTURES
- e) DEBT INSTRUMENTS ISSUED BY BANK
- f) SUBSCRIPTION TO NATIONAL PENSION SYSTEM

## NON REPATRIATION BASIS

- a) GOVERNMENT DATED SECURITIES, TREASURY BILLS, UNITS OF DOMESTIC MUTUAL FUNDS WITH LESS THAN OR EQUAL TO 50% INVESTMENT IN EQUITY
- b) LISTED NON CONVERTIBLE/ REDEEMABLE PREFERENCE SHARES OR DEBENTURES
- c) CHIT FUND AUTHORIZED BY REGISTRAR OF CHITS OR AN OFFICER AUTHORISED BY STATE GOVERNMENT IN THIS BEHALF



### **CONDITIONS FOR REPATRIATION BASIS :**

- 1) NRI / OCI HAS TO BE REGISTERED UNDER PORTFOILO INVESTMENT SCHEME ( PIS)**
- 2) PURCHASE CONSIDERTAION TO BE PAID EITHER THROUGH DIRECT OVERSEAS REMITTANCE OR FROM NRE A/C**
- 3) SALE CONSIDERTAION TO BE DEPORISTED IN NRE A/C**

### **CONDITIONS FOR NON REPATRIATION BASIS :**

- 1) PURCHASE CONSIDERTAION TO BE PAID EITHER THROUGH DIRECT OVERSEAS REMITTANCE OR FROM NRE A/C OR FCNR (B) A/C OR NRO A/C**
- 2) SALE CONSIDERTAION TO BE DEPOSITED IN NRO A/C ONLY**
- 3) NO REGISTRATION OR ANY COMPLIANCES ARE REQUIRED.**

## VARIOUS IMPORTANT TERMS

- ❖ **NON RESIDENT MEANS NRI ,OCI , NON – NRI ,FOREIGN COMPANY, FOREGN LLP / LLC, FOREIGN PARTNERSHIP FIRM OR PROPREITORSHIP FIRMS OR ANY OTHER ENTITY INCORPORATED OUTSIDE INDIA**
- ❖ **NON RESIDENT INDIAN (NRI) MEANS A PERSON RESIDING OUTSIDE INDIA BUT CITIZEN OF INDIA ( HOLDING INDIAN PASSPORT.)  
(LIKE PERSONS RESIDING IN GULF COUNTRIES )**
- ❖ **OVERSEAS CITIZEN OF INDIA (OCI) MEANS A PERSON RESIDING OUTSIDE INDIA WHO IS A CITIZEN OF FOREIGN COUNTRY AND REGISTERED AS AN OCI CARDHOLDER U/S 7(A) OF CITIZENSHIP ACT, 1955.**
- ❖ **PERSON OF INDIAN ORIGIN ( PIO) MEANS A PERSON RESIDENT OUTSIDE INDIA WHO IS A CITIZEN OF ANY OTHER COUNTRY OTHER THAN BANGLADESH OR PAKISHTAN OR SUCH OTHER COUNTRIES SPECIFIED BY THE CENTRAL GOVERNMENT SATISFYING THE FOLLOWING CONDITIONS ;**
  - a) WHO WAS A CITIZEN OF INDIA BY VIRTUE OF INDIAN CITIZENSHIP ACT 1955 OR**
  - b) WHO BELONGED TO A TERRITORY THAT BECAME PART OF PART OF INDIA AFTER 15<sup>TH</sup> AUGUST 1947 OR**
  - c) WHO IS A CHILD OR GRANDCHILD OR GREAT GRANDCHILD OF A CITIZEN OF INDIA OR PERSON COVERED IN a) AND b) ABOVE OR**
  - d) WHO IS A SPOUSE (OF FOREIGN ORIGIN) OF A CITIZEN OF INDIA OR PERSON COVERED IN A a) AND b) ABOVE**



## VARIOUS IMPORTANT TERMS

**PIO ALSO INCLUDES THE OCI CARDHOLDER AS REGISTERED U/S 7(A) of INDIAN CITIZENSHIP ACT,1955**

- ❖ **NRO A/C - NON-RESIDENT INDIANS (NRIs) OR PERSON OF INDIAN ORIGIN (PIOs) ARE PERMITTED TO OPEN AND MAINTAIN NRO A/C . THE ONLY LOCAL CURRENT A/C INCOME OR CAPITAL A/C RELATED RECEIPTS CAN BE DEPOSITED IN & LOCAL PAYMENTS CAN ALSO BE MADE FROM SUCH A/C AND NO REMITTANCE OUTSIDE INDIA IS PERMITTED TO BE MADE FROM SUCH ACCOUNT EXCEPT TRANSFER UNDER 1 MILION USD SCHEME TO NRE A/C OR DIRECT OVERSEASE REMITTANCE FROM SUCH ACCOUNT. NRO ACCOUNTS ARE SIMILAR TO SB A/Cs OF RESIDENTS.**
- ❖ **NRE A/C - NON-RESIDENT INDIANS (NRIs) OR PERSON OF INDIAN ORIGIN (PIOs) ARE PERMITTED TO OPEN AND MAINTAIN NRE A/C AND ONLY FUNDS RECEIVED FROM ABROAD CAN BE DEPOSITED IN SUCH ACCOUNT OR FUNDS LYING IN NRO A/C CAN BE TRANSFERRED TO SUCH NRE A/C SUBJECT TO ISSUANCE OF 15 CA/CB UNDER USD 1 MILLION REMITTANCE SCHEME. FUNDS LYING IN SUCH ACCOUNT CAN BE FREELY REMITTED OUTSIDE INDIA & CAN ALSO BE USED FOR MAKEING LOCAL / REPATRIABLE PAYMENTS.**

## NRIs/OCIs INVESTMENT IN INDIA

REPATRIATION BASIS	NON-REPATRIATION BASIS
1) INVESTMENT IN EQUITY INSTRUMENTS	1) INVESTMENT IN EQUITY INSTRUMENTS (UNDER SCHEDULE – IV)
A) PORTFOLIO INVESTMENT (UNDER SCHEDULE – III)	
B) FOREIGN DIRECT INVESTMENT (UNDER SCHEDULE – I)	
2) DEBT INSTRUMENTS (UNDER SCHEDULE 1 OF FEMA - 396)	2) DEBT INSTRUMENTS (UNDER SCHEDULE 1 OF FEMA - 396)
3) CAPITAL CONTRIBUTION IN LLP (UNDER SCHEDULE – VI)	3) CAPITAL CONTRIBUTION IN LLP (UNDER SCHEDULE – IV)
	4) CAPITAL CONTRIBUTION IN PROPRIETORSHIP AND PARTNERSHIP FIRM (UNDER SCHEDULE IV)

# FEMA (NON DEBT INSTRUMENTS) RULES 2019

## SCHEDULE – I (FOREIGN DIRECT INVESTMENT)

### **PROHIBITED SECTORS**

- 1) LOTTERY BUSINESS
- 2) GAMBLING
- 3) CHIT FUND
- 4) NIDHI FUND
- 5) TRADING IN TDR
- 6) REAL ESTATE BUSINESS (DEVELOPMENT & CONSTRUCTION ACTIVITIES ARE NOT CONSIDERED AS REAL ESTATE BUSINESS).
- 7) MANUFACTURING OF CIGARS, CHERROTS & TOBACCO RELATED PRODUCTS.
- 8) PUBLIC SECTORS LIKE RAILWAY OPERATION & ATOMIC ENERGY ETC.

### FOREIGN DIRECT INVESTMENT

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graph TD; A[FOREIGN DIRECT INVESTMENT] --> B[AUTOMATIC ROUTE]; A --> C[GOVT APPROVAL ROUTE]
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AUTOMATIC ROUTE

GOVT APPROVAL ROUTE



## **EQUITY INSTRUMENTS**

- 1) **EQUITY SHARES**  
**PARTLY PAID-UP SHARES ARE ALSO ALLOWED TO BE ISSUED PROVIDED MINIMUM 25 % OF TOTAL AMOUNT TO BE BROUGHT UPFORNT & BALANCE AMOUNT TO BE BROUGHT WITHIN PERIOD OF 12 MONTHS.**
- 2) **FULLY & MANDATORILY CONVERTIBLE PREFERENCE SHARES OR DEBENTURES**
- 3) **SHARE WARRANTS ISSUED BY INDIAN COMPANY**  
**SHARE WARRANTS ARE ALSO ALLOWED PROVIDED 25% OF THE AMOUNT TO BE BROUGHT UPFORNT & BALANCE TO BE BROUGHT WITHIN PERIOD OF 18 MONTHS**

## **SECTORAL CAP**

- ❖ **FDI CAN BE MADE WITHIN PERMISSIBLE SECTORAL CAP AS PER TABLE PROVIDED IN SCHEDULE – I & SUBJECT TO COMPLIANCE WITH CONDITIONS APPLICABLE TO THE CONCERNED ACTIVITY / SECTOR.**
- ❖ **SECTORS WHICH ARE NOT COVERED IN TABLE PROVIDED IN SCHEDULE – I ARE PERMITTED UPTO 100% UNDER AUTOMATIC ROUTE.**

## **PRICING GUIDELINES**

- ❖ **NOT APPLICABLE TO LISTED EQUITY INSTRUMENTS WHERE ISSUE PRICE IS DETERMINED THROUGH STOCK EXCHANGES OR SEBI.**
- ❖ **VALUATION OF SHARES TO BE DONE BY PRACTICING CHARTERED ACCOUNTANT , COST ACCOUNTANT OR SEBI REGISTERED MERCHANT BANKER AS PER ANY OF THE INTERNATIONALLY ACCEPTED VALUATION METHODOLOGIES OF PRICING UNDER ARMS LENGTH BASIS.**
- ❖ **WHILE ISSUING EQUITY SHARES NO EXIT VALUE CAN BE GUARANTEED .**
- ❖ **NO VALUATION IS REQUIRED FOR RIGHT ISSUE UNDER FDI PROVIDED RIGHT SHARES OFFERED TO THE NON-RESIDENTS ARE NOT AT A PRICE BELOW THE PRICE AT WHICH SUCH SHARES ARE OFFERED TO THE RESIDENTS.**
- ❖ **EQUITY INSTRUMENTS CAN BE ISSUED TO NON-RESIDENTS AT A PRICE NOT BELOW THE FMV DETERMINED BY THE VALUER BUT THERE IS NO UPPER CAP UNDER FEMA.**
- ❖ **BUT NOW ONE ALSO NEEDS TO COMPLY WITH THE PROVISIONS OF 56 (2)(VIIb) OF I T ACT WHICH SAYS SHARE ISSUE PRICE ABOVE FMV IS TAXABLE W.E.F 01.04.2023 UNDER I.T. ACT .HENCE NOW INDIAN COMPANY CAN NOT ISSUE SHARES AT A PRICE ABOVE FMV TO NON-RESIDENTS.**



## **ONLINE REPORTING UNDER RBI'S FIRM PORTAL**

### **FOR NEW ISSUE OF SHARES**

- ❖ **BUSINESS USER REGISTRATION & ENTITY MASTER REGISTRATION TO BE DONE THROUGH RBI FIRM PORTAL**
- ❖ **SHARES TO BE ALLOTTED WITHIN 60 DAYS OF THE RECEIPT OF FUNDS NOT AT BELOW THE FMV AS DETERMINED BY THE VALUER.**
- ❖ **FORM FC-GPR TO BE UPLOADED ON FIRM PORTAL OF RBI WITHIN 30 DAYS OF ALLOTMENT OF EQUITY INSTRUMENTS.**

### **DOCUMENTS TO BE ATTACHED WITH FORM FC-GPR**

- 1) **FIRC**
- 2) **KYC**
- 3) **COMPANY DECLARATION**
- 4) **BOARD RESOLUTION FOR ALLOTMENT OF SHARES**
- 5) **SHARE VALUATION CERTIFICATE IF APPLICABLE**
- 6) **CS COMPLIANCE CERTIFICATE**
- 7) **UNDERTAKING BY THE COMPANY DECLARING NO INVESTMENT FROM BORDER SHARING COUNTRIES.**
- 8) **RBI APPROVAL LETTER / MAIL AS A PROOF OF EARLIER ALLOTMENT TO INVESTOR IN CASE OF RIGHT ISSUE.**



## **FOREIGN PORTFOLIO INVESTMENT BY NRI / OCI ON REPATRIATION BASIS.**

### **SCHEDULE -III**

**1) SUCH NRI /OCI WHO IS REGISTERED AS PIS CAN PURCHASE OR SELL EQUITY INSTRUMENTS OF LISTED COMPANY THROUGH RECOGNIZED STOCK EXCHANGE SUBJECT TO FOLLOWING COMPLIANCES:**

**A) SUCH TRANSACTION TO BE DONE THROUGH DESIGNATED AD BANK.**

**B) INDIVIDUAL HOLDING SHALL NOT EXCEED 5% OF TOTAL PAID-UP EQUITY CAPITAL OF EACH SERIES OF SHARES / DEBENTURES / PREFERENCE SHARES OR WARRANTS ISSUED BY THE INDIAN COMPANY**

**AND**

**SUCH AGGREGATE HOLDING BY ALL SUCH NRIs / OCIs PUT TOGETHER SHALL NOT EXCEED 10% OF PAID-UP CAPITAL OF EACH SUCH SERIES OF SHARES/ DEBENTURES / PREFERENCE SHARES OR WARRANTS ISSUED BY THE INDIAN COMPANY.**

**SUCH AGGREGATE LIMIT OF 10% CAN ALSO BE RAISED TO 24% BY PASSING A SPECIAL RESOLUTION IN THE GENERAL BODY MEETING OF THE COMPANY.**

**2) SUCH NRI / OCI CAN ALSO INVEST WITHOUT ANY LIMIT IN DOMESTIC MUTUAL FUNDS WHOSE INVESTMENT IN EQUITY INSTRUMENTS IS MORE THAN 50%.**

**3) SUCH NRI /OCI CAN ALSO INVEST IN PUBLIC SECTOR ENTERPRISES BEING DISINVESTED BY THE CENTRAL GOVERNMENT.**

## **MODUS OPERANDI OF THE TRANSACTIONS**

- 1) NRI / OCI SHOULD BE REGISTERED UNDER PORTFOILO INVESTMENT SCHEME (PIS) THROUGH DESIGNATED BANKER**
- 2) NRI/OCI WILL HAVE TO OPEN NRO A/C AND NRE (PIS) A/C WITH THE DESIGNATED BANKER**
- 3) PURCHASE CONSIDERATION TO BE PAID THROUGH DESIGNATED NRE (PIS) A/C**
- 3) SALE CONSIDERTAION TO BE DEPOSITED IN NRO A/C FIRST AND THEN THE BANKER DEDUCTS APPLICBALE TDS.**
- 4) THEREAFTER THE BANKER TRANSFERS THE NET OF TAX AMOUNT FROM NRO A/C TO NRE (PIS) A/C.**
- 5) FURTHER PAYMENT FOR THE NEXT PURCHASE OF EQUITY INSTRUMENTS SHALL GO FROM SUCH NRE(PIS) A/C.**



# **INVESTMENT ON NON – REPATRIATION BASIS BY NRI/OCI ETC.**

## **SCHEDULE – IV**

- 1) FOR PURCHASE OR SALES OF EQUITY INSTRUMENTS OR CONTRIBUTION TO CAPITAL OF LLP**
  - a) INVESTOR SHOULD BE EITHER NRI / OCI OR COMPANY ,TRUST ,PARTNERSHIP OWNED & CONTROLLED BY NRI / OCI AND INVESTMENT SHALL BE SUBJECT TO FOLLOWING :**
    - I. EQUITY INSTRUMENT ISSUED BY THE INDIAN COMPANY WITHOUT ANY LIMIT THROUGH STOCK EXCHANGE OR UNDER PRIVATE PLACEMENT IN UNLISTED COMPANY.**
    - II. UNITS ISSUED BY INVESTMENT VEHICAL WITHOUT ANY LIMIT THROUGH STOCK EXCHANGE OR OUTSIDE IT.**
    - III. CAPITAL CONTRIBUTION TO LLP WITHOUT ANY LIMIT.**
    - IV. CONVERTIBLE NOTES ISSUED BY STARTUP COMPANY.**
  - b) ALL THE ABOVE INVESTMENTS ARE CONSIDERED AT PAR WITH INVESTMENT MADE BY RESIDENTS**
- 2) NRI / OCI CAN PURCHASE / SALE UNITS OF DOMESTIC MUTUL FUNDS WITHOUT ANY LIMIT PROVIDED SUCH MUTUAL FUNDS HAVE INVESTED MORE THAN 50% IN EQUITY INSTRUMENTS.**
- 3) PROHIBITED ACTIVITIES**
  - INVESTMENT IN EQUITY INSTRUMENTS, UNITS OF NIDHI COMPANY OR COMPANIES ENGAGGED INTO AGRICULTURAL ACTIVITY, PLANTATION ACTIVITY ,REAL ESTATE BUSINESS OR CONSTRUCTION OF FARM-HOUSE OR DEALING IN TDR .**



## **INVESTMENT BY NRI / OCI IN PROPRIETORSHIP OR P'SHIP FIRM**

- **PROPRIETORSHIP, PARTNERSHIP FIRM CAN UNDERTAKE ALL ACTIVITIES EXCEPT PROHIBITED ACTIVITIES I.E. AGRICULTURAL, PLANTATION, PRINT MEDIA OR REAL ESTATE BUSINESS.**
- **SUCH NRI / OCI CAN INVEST FUNDS FROM NRO A/C, NRE A/C OR BY DIRECT REMITTANCE FROM OUTSIDE INDIA.**
- **INCOME EARNED BY SUCH PROPRIETORSHIP OR P'FIRM CAN BE REPATRIATED OUTSIDE INDIA WITHOUT ANY LIMIT SUBJECT TO PAYMENT OF APPLICABLE TAXES IN INDIA.**
- **THE PRINCIPAL AMOUNT AT THE TIME OF EXIT CAN BE DEPOSITED INTO NRO A/C ONLY WHICH IS NORMALLY NOT REPATRIABLE OUTSIDE INDIA.**
- **BUT OVERSEAS REMITTANCE UNDER USD 1 MILLION REMITTANCE SCHEME PER FINANCIAL YEAR IS ALLOWED TO BE MADE FROM NRO A/C. SUBJECT TO ISSUANCE OF 15CA & 15CB.**

## PROS & CONS OF PVT. LTD. COMPANY / PARTENERSHIP FIRM AND IIP

	PVT. LTD. COMPANY	PARTNERSHIP FIRM
<b>ADVANTAGE</b>	<b>LIMITED LIABILITY</b>	<b>NO DOUBLE TAXATION (ONLY FIRM TAX TO BE PAID)</b>
<b>DIS-ADVANTAGE</b>	DOUBLE TAXATION (COMPANY TAX & DIVIDEND TAX)	UNLIMITED LIABILITY

### Limited liability partnership

**ADVANTAGE**

**LIMITED LIABILITY**

**NO DOUBLE TAXATION  
(ONLY FIRM TAX TO BE PAID)**

## **INVESTMENT IN LLP BY NON-RESIDENT ON REPATRIATION BASIS UNDER AUTOMATIC ROUTE SCHEDULE – VI**

- 1) ANY NON RESIDENT EXCEPT CITIZEN OF PAKISTAN OR BANGLADESH AND ENTITY FROM BANGLADESH OR PAKISTAN IS PERMITTED TO INVEST THROUGH LLP IN INDIA**
- 2) INVESTMENT IN LLP IS ALLOWED UNDER AUTOMATIC ROUTE IF FOREIGN DIRECT INVESTMENT UPTO 100% SECTORAL CAP IS PERMITTED FOR THE CONCERNED ACTIVITY AND THERE IS NO PERFORMANCE LINKED CONDITIONS ATTACHED TO SUCH SECTORAL CAP.**
- 3) VALUATION OF LLP IS REQUIRED TO BE DONE UNDER INTERNATIONALLY ACCEPTED METHODS OF VALUATION FOR NEW INVESTMENT AS WELL AS FOR THE TRANSFER OF EXISTING INVESTMENT BY ONE PARTNER TO ANOTHER PARTNER.**
- 4) INVESTMENT CAN BE DONE FROM NRE A/C HELD BY NRI / OCI OR BY DIRECT REMITTANCE FROM OUTSIDE INDIA.**
- 5) THE CURRENT PROFIT OF THE LLP CAN BE REPATRIATED OUTSIDE INDIA SUBJECT TO PAYMENT OF APPLICABLE TAXES IN INDIA.**
- 1) LLP CAN NOT BORROW MONEY BY WAY OF ECB (FOREIGN LOAN).**



# THANK YOU

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