



ISSUES IN REPORTING UNDER FEMA – LRS AND ODI

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Introduction & History

- Overseas Direct Investment
Regulation FEMA 120/2004-RB.
- Liberalised Remittance Scheme
A.P (Dir Series) Circular No 64 dated February 4, 2004.
- Overseas Direct Investment by Individual
(a.k.a LRS under ODI)
Regulation 20A w.e.f 05.03.2013



Overseas Direct Investment

- WOS / JV
- SPECIFIED LIMITS – 400% criteria; USD 1BN /FY
- PROHIBITIONS – Real Estate & INR linked financial products
- SOURCES OF INVESTMENT
- TOTAL FINANCIAL COMMITMENT



Overseas Direct Investment

- Definition of Net worth
- Net worth for partnership firm / LLP
- Valuation Norms

Overseas Direct Investment - Reporting

- ▶ Form ODI – *Lets look at the Form itself and discuss..*
- ▶ **Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions:**
 - Section A – Details of the IP / RI.
 - Section B – Capital Structure and other details of JV/ WOS/ SDS.
 - Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI.
 - Section D – Declaration by the IP/ RI.
 - Section E – Certificate by the statutory auditors of the IP/ self-certification by RI.

Overseas Direct Investment - Reporting

► Part II – Annual Performance Report

What is retained earning?

Implication of FDI into India in APR? Whether legal structure possible with ODI into JV/WOS and FDI by that JV/WOS?

Overseas Direct Investment - Reporting

- **Part III – Report on Disinvestment by way of**
 - a) Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of overseas JV / WOS;
 - b) Sale/ Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
 - c) Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of IP; and
 - d) Buy back of shares by the overseas JV/ WOS of the IP / RI.



FLA - Reporting

- Part of Annual compliance like APR.
- **Annual Return on Foreign Liabilities and Assets**
- Excel based return to be sent via email by 15th July of every year. (there's another date of Sept, are you complying?)
- *Lets look at the form for further discussion..*

FLA - Reporting

- IMPORTANT FAQ'S
- **Q2. What information should be reported in FLA return, if balance sheet of the company is not audited before the date of submission?**
- **Ans.:** If the company's accounts are not audited before the due date of submission, i.e. July 15, then the FLA Return should be submitted based on unaudited (provisional) accounts. Once the accounts get audited and there are revisions from the provisional information submitted by the company, they are supposed to submit the revised FLA return based on audited accounts by end - September.

FLA - Reporting

- ▶ **Q8. Whether FLA Return is required to be submitted by Registered Partnership Firms or branches or trustees, who have made Overseas Direct Investment or it is mandatory only Companies (Registered under Companies Act, 1956)?**
- ▶ **Ans.:** If the Partnership firms, Branches or Trustees have any outward FDI outstanding as on end-March of the reporting then they are required to send a request mail to get a dummy CIN number which will enable them to file the Excel based return. If any entity has already got the dummy CIN number from the previous survey, they should use the same CIN in the current survey also. **It is also informed that these dummy CIN numbers are provided by RBI for filling the excel based FLA return only not for any other purpose.**



FLA - Reporting

- ▶ FLA Return and APR for ODI are monitored by two different departments of RBI. Both submissions to be made if applicable.
- ▶ Earlier ODI / FDI, but not at year end – Co is not required to file FLA return
- ▶ All financial outstanding liabilities and claims (Trade Credit, Loans, Currency & Deposits, and other receivable & payments accounts) with foreign unrelated Parties should be reported in Block 6. **Any domestic liabilities or assets (even if it foreign currency) should not be reported in the FLA return.**
- ▶ Share application money received from foreign investor - should be disclosed under **Section V**



Liberalised Remittance Scheme

- ▶ Introduced in February 2004 - step towards liberalization
- ▶ Available to all **Resident Individuals** including minors
- ▶ Resident Individuals limit - USD 2,50,000 per Financial Year
- ▶ Any additional remittance - prior approval of RBI
- ▶ Consolidation possible in respect of family members
- ▶ Clubbing of LRS limit of family members for capital accounts transactions if the family members are not co-owners / co-partners of the overseas bank accounts/ investment/ property as the case may be



LRS – Transactions not allowed

- ▶ Transactions **otherwise not permissible** under FEMA
- ▶ Gift by a **resident to another resident**, in foreign currency, in later's foreign currency account held a abroad
- ▶ **Margins** or margin calls to overseas exchanges / overseas counterparty
- ▶ Capital Account remittance **by availing credit facility** from bank
- ▶ Capital Account remittance to countries identified by **FATF** as non-cooperative countries and territories or as notified by RBI



LRS – Transactions allowed

- ▶ Permissible **Capital Account Transactions** under LRS
 - ▶ Opening of **Foreign Currency account** abroad with a bank
 - ▶ **Purchase of property** abroad;
 - ▶ Making **Investments** abroad
 - ▶ Acquisition of shares of both listed and unlisted overseas company or debt instruments

LRS – Transactions allowed

- Acquisition of ESOPs (the Scheme is in addition to acquisition of ESOPs linked to ADR / GDR and acquisition of qualification shares)
- Investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes
- ***Setting up JV/ WOS outside India (Notification 263/2013)***
[ODI UNDER LRS]
- Extending loans including **loans in INR to NRIs** (subject to prescribed conditions) who are relatives as defined in Companies Act, 1956



LRS UNDER ODI

- **Regulation 20A of notification 120**
- ✓ JV/WOS should not be engaged in **real estate business/ banking business/ financial services** activity business
- ✓ JV/WOS should be engaged in bonafide business activity
- ✓ JV/WOS should be an **operating entity only** – Resident Individual cannot form an overseas SPV acting as mere Intermediary Holding Company.
- ✓ **No step down subsidiary** allowed to be acquired or set up by the JV/WOS acquired or set up by resident individual



LRS UNDER ODI

- ✓ Individual not to be on RBI's exporter caution list or list of defaulters or under investigation by any investigation/ enforcement agency or regulatory body
- ✓ Investment in JV/WOS located in countries identified by FATF as non-cooperative countries and territories or as notified by RBI prohibited
- ✓ Investment in JV/WOS abroad to be **reported in Part I of Form ODI** to AD Bank within 30 days of making remittance
- ✓ Disinvestment allowed after 1 year – to be reported in 60 days.
- ✓ APR applicable to RI



LRS Documentation

- ✓ All remittances to be made through a **single designated branch** of AD
- ✓ Individual to furnish **Form A2** to branch of AD bank of purchase of foreign currency
- ✓ **Mandatory to have PAN** to make remittances for capital account transactions & for current account transactions exceeding USD 25,000
- ✓ *Lets visit form for any questions.. Quite a simple form per se*



THANK YOU