

REGULATORY UPDATE

**Reporting regarding
ESOP/Sweat Equity
Shares by Indian Entity**



INVESTMENT UNDER EMPLOYEE BENEFIT SCHEME/ESOP/SWEAT EQUITY SHARES

The new regime for Overseas Investment (“Regulations on OI”) as issued by Reserve Bank of India on August 22, 2022 permits resident individuals being employee or a director of an office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or of an Indian entity in which the overseas entity has direct or indirect equity holding, to acquire, without limit, shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or Sweat Equity Shares offered by such overseas entity, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis.

The Regulations on OI have defined “Employee Benefit Scheme” as compensation or incentive given to the directors or employees of any entity which gives such directors or employees an ownership interest in an overseas entity through ESOP or any similar scheme.

NATURE OF INVESTMENT:

The Regulations on OI have created two broad categories of overseas investment viz. Overseas Direct Investment (“ODI”) and Overseas Portfolio Investment (“OPI”).

The categorisation of investment in the aforementioned categories is generally made basis the type of investor, type of investment, control in the target entity, and percentage of investment in the target entity. In case the interest acquired by the resident individuals by way of sweat equity shares or minimum qualification shares or under ESOP/ Employee Benefits Scheme is up to 10% of the paid-up capital/stock, whether listed or unlisted, of the foreign entity and without control, such investment shall qualify as OPI.

REPORTINGS

In case where the employee/director has invested in ESOP/Employee Benefit Scheme/Sweat Equity Shares of direct/indirect overseas parent entity under OPI

Route, then the Indian employer of such resident individual shall report the details of such investment in **Section A (Part B) and Section C of Form OPI within 60 days** from the end of each half-year i.e., **September or March to Reserve Bank of India through AD Bank.**

Recently, various AD Banks have become active on the aforementioned reporting requirement and are sending reminder e-mails to their customers urging them to file Form OPI.

Apart from the aforementioned reporting requirements applicable on the Indian employers, the Indian entities should also need to ensure that their employees are also complying with the relevant provisions of the law including but not limited to Income Tax Act, 1961.

EFFECT OF NON-COMPLIANCE OF FILING OF FORM OPI

The delay in filing of Form OPI will attract a late submission fee of INR 7,500 per form in terms of provisions of Regulations on OI read with A.P. (DIR Series) Circular No. 16 dated September 30, 2022 issued by Reserve Bank of India.

It must be noted that the option of late submission fee is applicable up to the period of three years from the due date of submission. In case delay in reporting is more than three years, then the offence in delay in reporting may be regularised by compounding of offences under Section 15 of Foreign Exchange Management Act, 1999, otherwise the Indian employer may be liable to penal provisions under Section 13 of Foreign Exchange Management Act, 1999.

For details, please refer:

<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12380&Mode=0>

[https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12381,](https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12381)

<https://rbidocs.rbi.org.in/rdocs/content/pdfs/13MDR291215.pdf>

DISCLAIMER: - *The summary information herein is based on Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*