Business Standard

OCBs make a comeback as NRI investment vehicle

Overseas corporate bodies as an investor entity for NRIs were derecognised in September 2003

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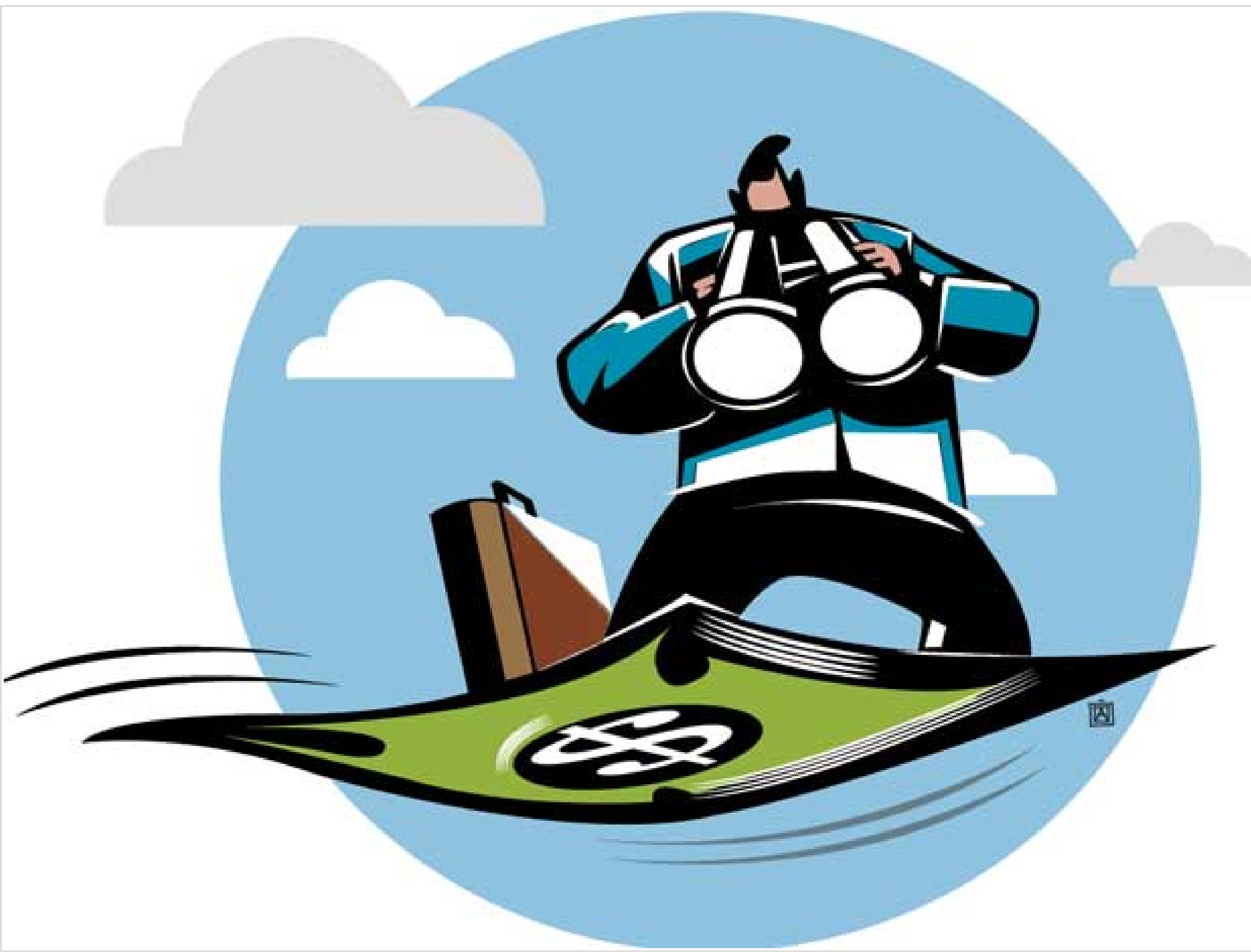

In a throwback to pre-2003 years, overseas corporate bodies (OCBs) as a vehicle for non-resident Indian (NRI) investment to India are set to make a comeback. This follows the recent move to relax foreign direct investment (FDI) norms whereby investments by companies, trusts, and partnerships, owned and controlled by NRIs (on non-repatriation basis), are to be treated as domestic investments. In effect, this indirectly recognises OCB as a class of investor entity - something that was derecognised in September 2003.

"It levels the playing field for NRI investors," says Girish Vanvari, head of tax, KPMG in India. Apart from directly investing in their individual capacity, NRIs can also use any other overseas entity that is owned and controlled by them to make the investment. "Such entity's investment will get the same treatment as given to NRI investments," says Lalit Kumar, partner in law firm J Sagar Associates.

According to Foreign Exchange Management Act, no pricing and sectoral restrictions apply if the investment is made by NRI on "non-repatriation basis". Till 2003, OCBs enjoyed the investment facilities available to NRIs. However, instances of 'OCB-shopping' by investors pushed the government to plug this route as a vehicle for NRI investment. After derecognition in 2003, such entities could invest only on repatriable-basis like any other foreign investor.

Tax experts and corporate lawyers note that NRIs will now have more avenues for structuring their investments to India. This "would allow NRIs investing on non-repatriation basis to ring-fence their Indian investments and to have the flexibility for investing though different entity structures depending on commercial and strategic considerations, administrative convenience, tax efficiency," law firm Nishith Desai Associates said in a note to its clients, while commenting on the recent relaxation in FDI norms.

Experts noted investments by such entities of NRIs on non-repatriation basis should not be included while determining whether an Indian company is a foreign-owned company. "From the perspective of downstream investment in companies engaged in sectors subject to sectoral caps or FDI-specific conditions or approval, existing limitations may not apply in case of Indian companies with investment by such entities," the note added.

According to experts, such investment on non-repatriation basis does not attract sectoral caps, filing requirements, pricing guidelines, cap on coupon rate in case of convertible instruments, such as compulsorily convertible debentures and compulsorily convertible preference shares, which are applicable for regular investments.

Experts allay the fears that the move to reinstate OCBs as a vehicle for NRI investment will lead to 'OCB-shopping'. According to Akash Gupt, leader (regulatory services) at PwC India, the regulatory environment of 2015 is very different from that of 2003. "Robust KYC (know-your-customer) norms are in place, while regulatory arbitrages have gone down," says Gupt.

It is not known if the government would want NRIs to hold 100 per cent equity in such an entity, or would allow minimum 60 per cent holding, with the balance held by other investors, as was the case in the pre-2003 OCB regime.