Corpsec Hotline

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NRIS MAY BE PERMITTED TO INVEST IN INDIA THROUGH SUB-ACCOUNT ROUTE

Securities and Exchange Board of India (**SEBI**) is reported to have, in its recently concluded board meeting, discussed a proposal to allow overseas investors like non-resident Indians (**NRIs**), foreign firms and individuals to invest in Indian capital markets by registering themselves as sub- accounts with Foreign Institutional Investors (**FIIs**). Under the extant FII Regulations foreign corporates and foreign individuals are allowed to invest through the FII/sub-account route hence it will have to be seen what further refinements will be made in the existing regulatory framework as regards these investors. However, the objective of the proposal seems to expand the categories of eligible investors by allowing NRIs to register themselves as sub-account and thereby allowing them to invest under the FII regime.

Under the FII regulations NRIs currently are not allowed to register themselves as FIIs or sub-accounts and the only route available for NRIs to invest in the Indian capital markets is through Portfolio Investment Scheme (**PIS**) laid down under the Indian exchange control regulations. Under PIS an NRI can invest only up to 5% of the total share capital of the Indian company and the aggregate investment by NRIs is capped at 10% of the total share capital which can be increased to 24% subject to a special resolution of the shareholders of the company in that regard.

Thus aggregate investment by NRIs is capped at 24% of share capital of the company. However, in case of limit on aggregate investment by FIIs/sub-accounts, shareholders of the company may by way of a special resolution increase FII/sub-account investment limit from the prescribed 24% to the maximum permissible foreign investment threshold laid down for companies engaged in various sectors. SEBI and RBI will have to iron out these inconsistencies before they decide to implement the proposal.

Implications

- NRIs will be able to pool their monies in a tax treaty jurisdiction and thereby benefit from low or nil tax liability in India. Hitherto investments by NRIs were generally made directly from their home country jurisdiction that may not necessarily be tax efficient.
- Flexibility to appoint professional investment managers to manage pooled vehicles and thus not just benefit from their expertise but also delegate the burden of managing the portfolio and keeping track of it.
- NRIs will now be able to spread their investment risk by investing in to a pooled vehicle as opposed to direct investments through PIS route which has relatively greater investment risk.

To make the above a reality SEBI and RBI will have to suitably amend the FII Regulations and exchange control regulations respectively. It remains to be seen in what manner and when the existing regulatory framework will be amended.

Source: The Economic Times dated February 21, 2007.

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You can direct your queries or comments to the authors

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