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INDIAN INVESTMENT IN PROPERTY OVERSEAS

Purchasing property abroad requires a certain amount of structuring to ensure that foreign property investments are both legal and tax efficient.

Indian residents are able to purchase property abroad through a number of different routes. Each of these routes is subject to differing legal conditions and has differing tax implications, both in India and the foreign country. Purchasing property abroad therefore requires a certain amount of structuring to ensure that foreign property investments are both legal and tax efficient. Structuring a foreign property transaction correctly can greatly mitigate the risks involved with purchasing property abroad. This article briefly explores the options available to Indian residents for the purchase of property overseas.

Are resident Indians purchasing property abroad?

Indian investment in property overseas is becoming increasingly common these days. This trend owes much to the fact that overseas property has now become much more affordable for Indians. Additionally, the risks associated with verifying title to overseas property are considerably lower than the risks to property title at home. With many Indians finding their family scattered across the globe, many Indians are also buying properties abroad in order to visit their near and dear ones more easily.

Government policies have been steadily liberalising overseas remittances, permitting more Indians and Indian-owned companies to transfer money abroad to purchase property. Despite this more permissive attitude, such overseas investments remain subject to a number of legal conditions and regulations.

What are the current legal regulations for purchasing property overseas?

The purchase of foreign property by Indian residents is regulated by the Foreign Exchange Management Act, 1999 (the **FEMA**) and by several notifications and directions issued by the Reserve Bank of India (the **RBI**). These legal regulations state that Indian residents may invest in property abroad with the general or special permission of the RBI. The regulations also set out the circumstances in which general permission is granted by the RBI (i.e., circumstances in which Indian residents can purchase property abroad without seeking the prior approval of the RBI).

In what ways can resident individuals purchase property abroad without seeking RBI approval?

*Resident Foreign Currency (**RFC**) Account*

Resident individuals can purchase property abroad using funds held in an RFC account without prior RBI approval.

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Jointly with non-resident relative

Resident individuals are also permitted to purchase property overseas jointly with a relative who is resident outside India, without prior RBI approval. However, the property must be purchased using funds that are already overseas, without any outflow of funds from India.

*Liberalised Remittance Scheme (**LRS**)*

The LRS has been in operation from 2004. This scheme permits resident individuals to transfer funds abroad from India, up to a fixed annual limit, without prior RBI approval. In 2015, this annual limit (per financial year) was increased to USD 250,000. The funds transferred abroad under the LRS can be used to purchase property abroad. Individuals can also pool money transferred under the scheme with their family members and purchase joint property overseas. Minors are also permitted to avail of the LRS limit through their natural guardians. A family of four, could therefore, jointly transfer USD 1,000,000 abroad in one financial year, to purchase a property abroad in their joint names. At present, individuals who have purchased property abroad using the LRS allowance are not required to repatriate the monies to India upon disinvestment. Remittance under the LRS is, however, subject to certain other conditions, with respect to the method of overseas remittance, obtaining loans, reporting requirements etc.

Individuals who wish to remit abroad funds in excess of the LRS limit can do so after obtaining RBI permission.

Can a resident individual invest in property abroad through a foreign company?

A resident individual is permitted to use the annual LRS limit to invest in foreign companies, which can then purchase property abroad. Investment by an individual in a foreign company is subject to certain additional conditions.

What about the purchase of overseas property by Indian companies / LLPs / registered partnerships?

Direct purchase by Indian company

Indian companies with overseas offices are permitted, without application to the RBI, to acquire immovable property outside India for business and as staff residences, up to a certain percentage of their turnover / net worth.

Indirect purchase through investment in foreign company

RBI regulations permit Indian companies, LLPs and registered partnerships (**Indian Entities**) to invest in the equity of or set up foreign companies, which can then purchase real estate abroad. The Indian Entities can make such an investment without RBI's prior approval, subject to a limit of USD 1 billion per year or 400% of their net worth, whichever is lower. The foreign company in which the Indian Entity invests must be an operational entity engaged in a *bona fide* business, which must not be a real estate business (or a banking business). Investment through a Special Purpose Vehicle (**SPV**) mechanism is permitted. Indian Entities investing in foreign companies are also subject to conditions regarding the repatriation of funds to India within a specific period of disinvestment.

Additional conditions regarding the method of remittance of funds abroad, the manner of disinvestment etc. also apply to investments by Indian Entities.

As with individuals, Indian Entities can remit larger sums of money abroad or purchase other property abroad after obtaining RBI approval.

More and more Indians are seeking to expand their horizons and make investments outside the country.

Are there any tax implications to purchasing property overseas?

Tax considerations play a big part in decisions regarding foreign property investment. The sale of a property within India to finance the purchase of a foreign property could create a tax liability within India. Further, the lease, sale or transfer of foreign property, once purchased, would also create a tax liability, both in India and in the foreign country. This liability needs to be managed in order to ensure that double taxation is avoided and the most tax efficient method of property purchase is adopted.

Conclusion

Twenty-five years since the liberalisation of the Indian economy in 1991, there has been a clear uptick in the inflow of foreign investments into India. Simultaneously, more and more Indians are seeking to expand their horizons and make investments outside the country.

It is clear that persons resident in India now have several avenues through which they can invest in properties overseas. While a complicated regulatory framework still governs the purchase and sale by Indian residents of properties abroad, the RBI seems to be progressively loosening the strings on Indian investment abroad. For High Net Worth Individuals and companies who are resident in India, this provides a unique opportunity to diversify their interests and purchase property overseas.

- By Krishna Hariani
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