



## Tax alert: RBI paves way to simplify carry or co-investment opportunities in overseas fund vehicles

10 June 2024

In line with industry representations, the Reserve Bank of India has issued a circular facilitating and simplifying the current norms for Indian residents to make overseas investments (especially carry and co-investment contributions), in offshore fund vehicles, as overseas portfolio investment ("OPI"). This shall largely liberalise investments by Indian investors in overseas fund vehicles.

### In a nutshell



#### Funds managed by regulated Investment Manager

Investment in offshore funds is now permitted as OPI, even if the fund itself is not duly regulated, its activities are regulated by overseas financial sector regulator through a regulated investment manager.  
(in the erstwhile law, investment was permitted in overseas fund which itself was duly regulated)



#### Investment instruments in fund vehicles expanded

In addition to investment in 'units' of offshore investment fund or funds in IFSC, investments shall also now be permitted in any other instruments (by whatever name called) issued by such offshore funds / funds in IFSC.

These relaxations will facilitate setting up efficient structures for carry/ co-investment vehicles even in jurisdictions like Singapore as opposed to the earlier regime, where Cayman Island had emerged as a more viable proposition given the fund regulation ecosystem in those countries. This change will also allow Indian stakeholders to more effectively tap global investment opportunities directly.



Scroll down to read the detailed alert

## Historical Background:

- Prior to August 2022, overseas investments by Indians were largely regulated by the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 and Liberalized Remittance Scheme (“LRS”) framework (together, “**Old ODI Regs**”).
- LRS norms, *inter-alia*, permitted investment by resident individuals in units of venture capital funds and shares of overseas companies.
- In August 2022, Ministry of Finance and the Reserve Bank of India (“**RBI**”) overhauled the overseas investment regime and released the Foreign Exchange Management (Overseas Investment) Rules, 2022 (“**OI Rules**”) and the Foreign Exchange Management (Overseas Investment) Regulations, 2022 (“**OI Regulations**”) respectively and RBI also issued Foreign Exchange Management (Overseas Investment) Directions, 2022 (“**OI Directions**”) (together being referred to as “**2022 OI Framework**”).

## Existing 2022 OI Framework:

- RBI, in its OI Directions, permitted investment by listed Indian companies and resident individuals (including sponsor contribution) in units of any investment fund overseas, **duly regulated by the regulator** for the financial sector in the host jurisdiction, as OPI.
- The said OI Directions also permitted an unlisted Indian entity (in addition to listed Indian companies and resident individuals) to make investments in units of an investment fund or vehicle in IFSC as OPI.
- Considering that generally in overseas jurisdictions, investment manager of the funds, is duly regulated and not the fund itself, it impacted the existing and new commitments of resident individuals towards their carry / co-investment commitments in overseas funds.
- Also, considering such investments were allowed only in units, there existed an ambiguity on permissibility of an investment in any other type of instrument (such as shares, partnership interest, etc.) of such overseas fund vehicle.

## RBI Circular:

- Various representations were made to the Ministry of Finance and the RBI, to provide clarity on the above aspects and accordingly, in view of the diverse regulatory framework governing investment funds across various jurisdictions, RBI on 7 June 2024 amended the OI Directions, as mentioned below:
  - Listed Indian companies and resident individuals are permitted to invest as OPI in investment fund overseas, whose activities are duly regulated by financial sector regulator of host country or jurisdiction through a fund manager. Accordingly, investment by listed Indian companies and resident individuals in overseas investment fund (which itself is not regulated but is managed by a regulated investment manager which is generally the case in a foreign jurisdictions) is now permitted as OPI; and
  - In addition to investment in units of such funds, such investment can now also be made in any other instrument (by whatever name called) issued by an investment fund overseas or investment fund / vehicle set up in IFSC. This shall now provide flexibility for investors to invest in instruments of overseas funds set up in various types of legal forms.

## Conclusion:

The above amendments by RBI are a welcome move, and in line with industry demands and international fund regimes. This move will pave the way for facilitating portfolio investments in overseas investment funds or an investment fund set up in IFSC, with more clarity for resident investors, especially the General Partners of private equity and venture capital funds.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see <http://www.deloitte.com/about> to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which is a separate and independent legal entity, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

This communication contains general information only, and none of DTTL, its global network of member firms or their related entities is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication.