



NANUBHAI DESAI & CO.

**A quick checklist for
INVESTMENTS ABROAD
FROM INDIA**

About Nanubhai Desai & Co.

Nanubhai Desai & Co., established in 1950 in Mumbai, has evolved into a well-recognized high quality personalized services firm. Our extensive knowledge and expertise across various service areas, including Audit and Assurance, Direct Taxes, Accounting, International Tax, and Consultancy services, enable us to offer a "One Stop Platform" by setting a benchmark of excellence in each domain.

With years of experience, we cater to a diverse clientele, including multinational companies (MNCs), foreign companies and their Indian subsidiaries, as well as public and private enterprises spanning industries such as hospitality, trading, fund & private wealth management, IT, and more. Our team comprises dedicated professionals with diverse skills and proficiency, capable of serving clients of all sizes across different sectors.

NDCo embodies a harmonious mix of seasoned expertise and youthful vigour, united by a shared vision of delivering exceptional services and unwavering support to our clients. It's a source of great professional pride that we have attained high level of trust and confidence of our clients.

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TERMINOLOGY GUIDE

DTAA	Double Taxation Avoidance Agreement
ECB	External Commercial Borrowings
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FPI	Foreign Portfolio Investor
FVCI	Foreign Venture Capital Investor
GDR	Global Depository Receipt
IFSC	International Financial Services Centre
ITAT	Income Tax Appellate Tribunal
ITA	Income Tax Act, 1961
LRS	Liberalized Remittance Scheme
NRE	Non-Resident External (account)
NRI	Non-Resident Indian
NRO	Non-Resident Ordinary (account)
ODI	Overseas Direct Investment
RBI	Reserve Bank of India
SEBI	Securities and Exchange Board of India

1. INTRODUCTION

Investment abroad from India has emerged as a significant aspect of the country's economic landscape, reflecting its growing presence in the global market. Over the years, Indian businesses and individuals have increasingly ventured into international markets to diversify their portfolios, access new opportunities, and enhance competitiveness. This trend is driven by various factors, including favourable regulatory reforms, globalization, technological advancements, and the quest for higher returns.

With India's economy continuing to expand and integrate with the world, outbound investment has become a crucial strategy for both businesses and investors seeking to harness the benefits of international markets. As Indian companies expand their footprint overseas, they contribute to economic growth, job creation, and knowledge exchange, while also facing challenges such as regulatory compliance, currency fluctuations, and cultural differences. Therefore, exploring the dynamics, challenges, and opportunities of investment abroad from India is essential for stakeholders aiming to navigate the complexities of global investment landscapes effectively.



2. UNDER LRS ROUTE

a. Introduction

The Liberalized Remittance Scheme (LRS) has emerged as a vital avenue for Indian residents to diversify their investment portfolios and engage in international transactions. Introduced by the Reserve Bank of India (RBI), the LRS route allows individuals to remit a certain amount of money abroad annually for various purposes such as investment in overseas financial assets, education, travel, and acquisition of property. Since its inception, the LRS has provided Indian residents with greater flexibility and opportunities to explore global markets, enabling them to expand their financial horizons beyond domestic boundaries.

The LRS allows Indian residents to remit funds abroad within specified limits, subject to conditions and documentation. It promotes cross-border transactions, fosters economic integration, and facilitates global aspirations. Understanding its intricacies is essential for leveraging its potential for international investment while complying with regulations.

b. LRS Route

i. Number of family members and eligibility (NRI not eligible):

The LRS allows resident individuals, including Hindu Undivided Families (HUFs), to remit funds abroad. However, NRIs are not eligible. Each eligible resident individual, along with their family members, can utilize the LRS for various purposes.

ii. Proposed jurisdiction of LRS Account:

LRS accounts can be opened with authorized dealer banks in India. Remitters need to specify the jurisdiction where they intend to use the funds, ensuring compliance with regulations.

iii. KYC Documents:

Each eligible family member must submit KYC documents as per RBI guidelines, including proof of identity and address, to verify eligibility and comply with AML regulations.

iv. End use of funds:

Funds remitted under LRS can be used for stocks, education, medical expenses, property, or corporate vehicles abroad, as long as they comply with RBI guidelines.

v. Restrictions of LRS route:

This includes limitations on permissible activities, an annual threshold for remittances, reporting requirements for corporate vehicles, & prohibition on step-down investments.

vi. Foreign earnings/income through LRS:

Earnings abroad must be reported to RBI. Repatriation of proceeds is allowed s.t rules.

vii. Foreign income (outside of LRS):

Income like consultancy fees or overseas salary must be reported separately to Indian authorities and is subject to taxation.

viii. Documents/filings for remittance:

Necessary documents such as application forms and declarations must be submitted to authorized dealer banks for remittance transactions.

3. UNDER ODI ROUTE

a. Introduction

The ODI route serves as a strategic avenue for Indian companies to expand their global footprint and pursue business opportunities overseas. Regulated by the RBI, the ODI route enables Indian businesses to invest in foreign countries through various means such as M&A, joint ventures, wholly-owned subsidiaries, or setting up new ventures. This route allows Indian companies to leverage their expertise, resources, and market knowledge to explore international markets, access new technologies, and diversify their operations.

The ODI route allows Indian companies to access new markets, enhance global competitiveness, mitigate domestic market risks, gain exposure to diverse consumers, and boost international brand presence. Understanding this route is crucial for Indian businesses to seize global opportunities while navigating regulations and ensuring the success of overseas ventures.

b. ODI Route

i. Eligibility:

Indian entities such as companies, LLPs, and registered partnership firms are eligible for ODI. Permissible activities include mergers, acquisitions, setting up subsidiaries, joint ventures, and more, subject to RBI regulations.

ii. Jurisdiction of ODI:

Analysing various options from tax, regulatory, and commercial aspects is essential for determining the jurisdiction of ODI. This ensures compliance and maximizes operational efficiency for the Indian entity investing abroad.

iii. KYC Documents:

Each Indian entity, shareholder, and director involved in ODI must submit KYC documents as per RBI guidelines, including proof of identity, address, and other relevant information.

iv. End use of funds:

Funds remitted through ODI can be used for various purposes such as stock/portfolio investments, acquisition of immovable properties, or establishing corporate vehicles abroad, subject to RBI guidelines.

v. Restrictions of ODI route:

Restrictions include permissible activities, annual thresholds for investment, reporting requirements, and prohibition on step-down investments without reporting.

vi. Proposed corporate structure:

Planning the legal and functional structure of the overseas entity is crucial to ensure alignment with local regulations and business objectives.

vii. Proposed fund flows from/to India:

Careful consideration of fund flows from and to India is essential to avoid concerns regarding round-tripping and ensure compliance with RBI regulations.

viii. Documents/filings for remittance:

Necessary documents and filings must be submitted to authorized dealer banks for remittance transactions under the ODI route.

4. MIGRATION OUTSIDE INDIA or CITIZENSHIP OF OTHER COUNTRY

- **Analyse individual status:** Evaluate the role of the individual as a Promoter, Director, or Shareholder of the Indian entity to understand their legal and financial responsibilities.
- **Assess implications for Indian structure:** Examine the consequences of migration on the Indian structure before and after migration, including any changes in ownership, management, or operations.
- **Determine migration jurisdiction:** Identify the jurisdiction for migration and understand the associated legal and regulatory conditions to ensure compliance with relevant laws.
- **Submit KYC documents:** Provide Know Your Customer (KYC) documents as per regulatory requirements to verify the identity and eligibility of the individual migrating outside India.
- **Provide documentation for reasons/circumstances:** Prepare documentation explaining the reasons or circumstances for the migration, which may include personal or business-related factors.
- **Plan post-migration operating structure:** Develop a proposed operating structure for the individual's affairs post-migration, considering both legal and functional aspects to facilitate smooth operations in the new jurisdiction.
- **Establish a model for 'control and management' of the new structure:** Define a model for the control and management of the new entity or assets post-migration to ensure effective decision-making and compliance with local regulations.
- **Plan fund flows from/to India:** Outline proposed fund flows between India and the new jurisdiction, ensuring compliance with regulations and addressing any concerns related to round-tripping of funds.
- **Outline future fund raise initiatives and other plans:** Identify potential future fundraising activities or business plans post-migration to support the growth and sustainability of the individual's affairs in the new jurisdiction.
- **Prepare necessary documents and filings for remittance:** Gather all required documents and filings for remitting funds abroad, ensuring compliance with regulatory requirements in both India and the new jurisdiction.

5. INCOME TAX – SCOPE & OBLIGATION

Particulars	LRS Route	ODI Route *	Migration outside India
Residential status	Not affected	ODI Co can be regarded as 'Resident'	No of days test along with other parameters to be examined
Scope of taxable income at India	Worldwide income taxable at India for Resident Indian	- ODI Co (regarded as Resident) can be taxed at India - Income may arise at time of transfer/change to the ODI Co post investments	Worldwide income or Indian sourced Income, depending upon various factors
Payment of income taxes at India	Advance Tax and self-assessment tax	ODI Co (regarded as Resident) may get credit for taxes paid in other jurisdiction, subject to applicable conditions	Advance Tax and self-assessment tax, as may be applicable
Implication of tax treaty/MLI	Tax incidence as well as entitlement of its credit at India to be determined by relevant tax treaty (as modified by MLI)		
Applicability of TDS/TCS provisions	LRS Remittance shall attract TCS @ 5% on the aggregate remittance amount exceeding Rs 7 lakhs during FY	Shall depend upon the nature and value of fund flow from/to India	
Select Filings under FEMA	At the time of remittance, at the time of setting up Corporate Vehicle and annual/recurring, as applicable	At the time of remittance, at the time of setting up ODI Co, at the time of setting up step-down for ODI Co and annual/recurring, as applicable	Intimation to banks, investee companies, etc. on change to the residential status under FEMA
Applicability of Transfer Pricing Regulations	N.A.	Yes	Depending upon the nature and value of transactions with Indian entities
Reporting under Income Tax Act	At the time of filing ROI, disclose prescribed details of foreign accounts, entities/trust	Relevant Indian entity to report income/assets, as may be applicable	Having regard to the residential status under the IT Act – disclose foreign assets/accounts/income

*check for likely GST exposure and accounting rules for consolidation

What support do we offer?

- Expert advice on tax planning strategies to optimize tax positions and comply with tax laws in multiple jurisdictions.
- Assistance in navigating complex foreign exchange regulations for remitting funds abroad and repatriating profits from overseas investments.
- Guidance on structuring cross-border transactions, mergers, acquisitions, joint ventures, and setting up subsidiaries abroad, while ensuring compliance with relevant laws.
- Ensuring compliance with transfer pricing regulations to prevent tax disputes and penalties and setting arm's length prices for transactions between related entities in different countries.
- Assistance in complying with IFRS when preparing financial statements for overseas subsidiaries or investments.
- Conducting financial due diligence for clients looking to invest or acquire businesses abroad, analysing financial statements, assessing risks, and providing insights into target companies' financial health.
- Strategic advice on market entry strategies, regulatory compliance, risk management, and financial planning for businesses expanding internationally.
- Optimization of corporate structures for international operations, including restructuring existing entities to align with business objectives and regulatory changes.
- Providing audit and assurance services for companies with international operations to ensure compliance with regulatory requirements and provide stakeholders with assurance about financial information.
- Structuring assets and estate plans across borders, considering tax implications, succession planning, and asset protection strategies for international investments.

Annexures

Questions for Investments abroad: Profiling as Client & Evaluating various factors for investments

Sr. No.	Particulars	Remarks/Response
1	Name of the Authorised Person	
2	Address	
3	Email Id	
4	Cell Phone number	
5	Residential Status under Income Tax Act	
6	Residential Status under FEMA	
7	PAN	
8	If Non-resident, do you have Tax Residency certificate of other country?	

Overview of present structure (family and business)

Sr. No.	Particulars	Remarks/Response				
1	Details of family members					
	Name(s) of the member(s)					
	Date of Birth					
	Residential status (under IT Act)					
	Email Id Cell Phone number					
	Cell Phone number					
2	Preferences of each family member	Education	Career/Profession	Growth capital	Wealth protection	Life style
	Age group up to 12 years	Provide Details	N.A.	N.A.	N.A.	N.A.
	Age group 13 to 19 years	Provide Details	N.A.	N.A.	N.A.	N.A.
	Age group 20 to 29 years	Provide Details	Provide Details	Provide Details	Provide Details	Provide Details
	Age group 30 to 49 years	Provide Details	Provide Details	Provide Details	Provide Details	Provide Details
	Age group 50 to 59 years	Provide Details	Provide Details	Provide Details	Provide Details	Provide Details
	Age group 60 and above	Provide Details	Provide Details	Provide Details	Provide Details	Provide Details
3	Details of existing legal entities of the Family					
	LLP Company					
	Name					
	Date of incorporation					
	Provide copy of Constitution doc.					
	Location/Jurisdiction					
	Number of partners					
	Ownership of the Family (%)					
	Trust/Foundation					
	Name					
	Date of incorporation					
	Provide copy of Constitution doc.					
	Location/Jurisdiction					
	Number of partners					
	Ownership of the Family (%)					

Overview of present portfolio (may be relevant for Migration/Citizenship of foreign country)

Sr. No.	Particulars	Remarks/Response
1	Portfolio of assets ((A) provide name and/or number of assets & (B) Fair Value/NAV of each asset)	
	Operating entity for family business (domestic)	
	Operating entity for family business (international)	
	Shares and securities (Listed) - domestic	
	Shares and securities (Listed) - international	
	Shares and securities (Unlisted) - domestic	
	Shares and securities (Unlisted) - international	
	Immovable properties (residential) - domestic	
	Immovable properties (residential) - international	
	Immovable properties (commercial) - domestic	
	Immovable properties (commercial) - international	
	Loans given - domestic	
	Loans given - international	
	2	Categorisation (either summary of value or % of each category to total value)
Liquid Assets (listed securities, Loans)		
Illiquid assets (Private stocks, immovable properties)		
Start-up sector		
Other Private Assets		
Insurance linked		

For LRS Remittance

Sr. No.	Particulars	Remarks/Response
1	Proposed jurisdiction for LRS Account	
2	Please specify the purpose of remittance/end use of Funds proposed to be remitted under LRS (for example: stocks/portfolio, education, medical expenses, immovable properties, corporate vehicle for JV/business)	
3	If for JV/Business, please specify the nature of business activities	
4	Please specify the proposed amount of remittance each F.Y. (April - March) - separately for each family member	
5	Please specify the likely fund from/to India (other than LRS remittance) - separately for each family member	
6	Please specify the amount of foreign income likely to arise by Family member/s through employment/consultancy arrangement (for F.Y. (April - March))	
7	Details of foreign service providers/advisors likely to be appointed for this transaction.	

For ODI Remittance

Sr. No.	Particulars	Remarks/Response
1	Proposed jurisdiction of business activities	
2	Please provide copy of latest audited financial statements of each entity through which ODI transaction is proposed	
3	Please specify the proposed business activities outside India	
4	If for JV/Business, please provide details of JV partner/entity	
5	Please specify the proposed amount of remittance each Financial year (April to March)	
6	Please specify the likely fund from/to India	
7	Please specify the proposed corporate and governance schedule for ODI Vehicle	
8	Please provide details of any corporate action (like merger, fund raise, divestment, etc.) likely/planned within next 12/15 months	
9	Details of foreign service providers/advisors likely to be appointed for this transaction	

For Migration Outside India

Sr. No.	Particulars	Remarks/Response
1	Proposed jurisdiction of migration	
2	Please provide details of conditions associated with migration/citizenship	
3	Please specify the proposed activities outside India (employment, business venture, education, etc.)	
4	Please specify the proposed corporate and governance schedule for offshore structure	
5	Please specify the likely fund from/to India for each Financial Year (April to March)	
6	Please provide details of any corporate action (like merger, fund raise, divestment, etc.) likely/planned within next 12/15 months	
7	Details of foreign service providers/advisors likely to be appointed for this transaction	

Overview of Services desired

Sr. No.	Particulars	Remarks/Response				
1	Specific Services					
2	Which of the following services would you desire:					
	LRS Remittance					
	ODI Remittance					
	Migration/Citizenship					

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