

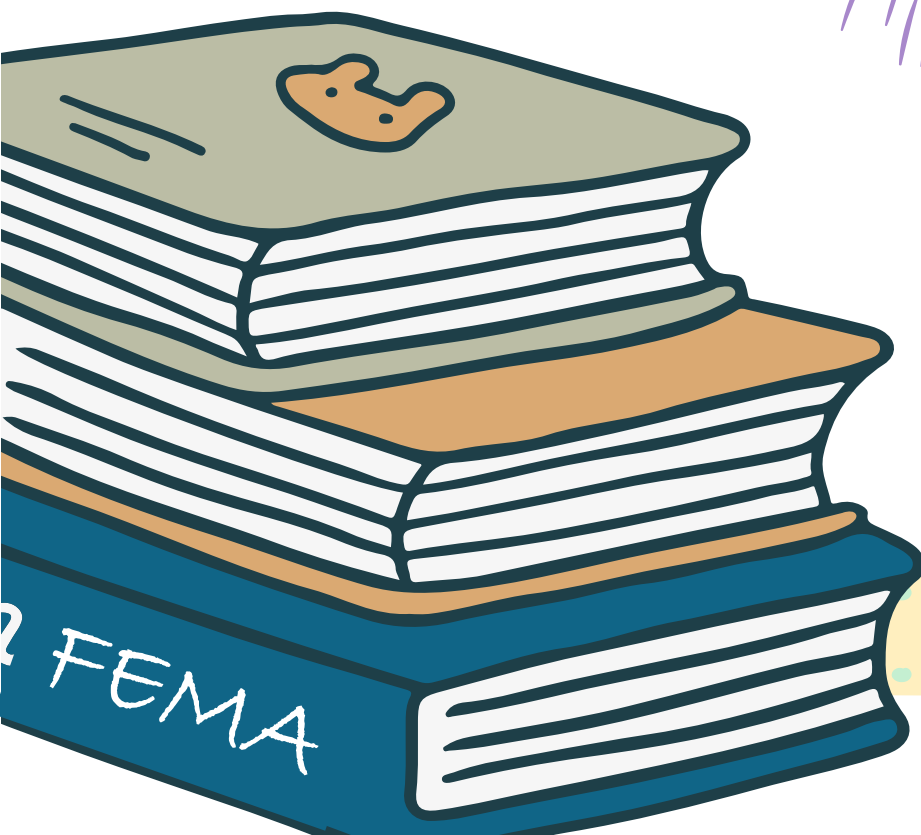
FEMA Ke Fundae

#FamiliarwithFEMA

Happy 2nd Anniversary



**ESOPs by a
Foreign Company
to an Indian
Subsidiary**



Date: 05/06/2024

Issue no: 104





Bhaskar
Director of an Indian
Co.

Hello Mr. FEMA Gyani, hope you're doing well. I am Bhaskar, Director of an Indian Company. I have a question about ESOPs. Our overseas parent company has offered ESOPs to all employees, can we participate in this?



Sure, Bhaskar. The employees and director of an Indian Company can acquire shares or interests under Employee Stock Ownership Plans (ESOPs) offered by overseas entities under certain conditions.



The FEMA Gyani

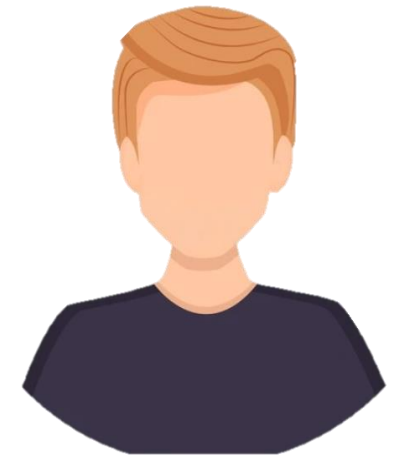




Bhaskar
Director of an Indian
Co.

So, what percentage can we apply for ESOP?

Well, there is technically no limit, but you need to keep in mind your LRS limit, which is \$250,000 per year.



The FEMA Gyani

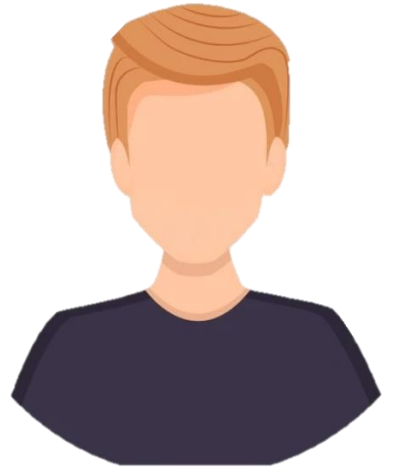
Okay, I understand. What do we need to do next?



Bhaskar
Director of an Indian
Co.



There are some conditions related to OPI and ODI are as follows:



The FEMA Gyani

Investments below 10% of foreign entity capital without control classify as Overseas Portfolio Investment (OPI).

Overseas Direct Investment (ODI)" covers buying shares in unlisted companies or subscribing to a foreign company's founding documents. It also includes owning 10% or more of a listed foreign company's shares, with or without control, and owning less than 10% with control.

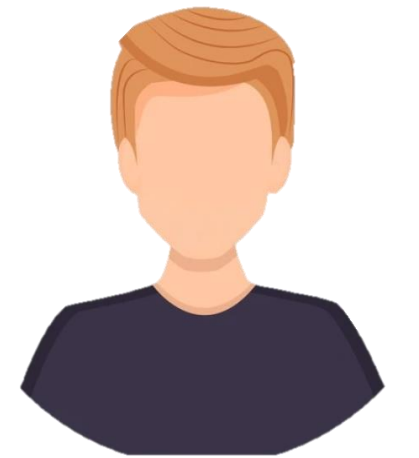




Bhaskar
Director of an Indian
Co.

Okay, and what about reporting?

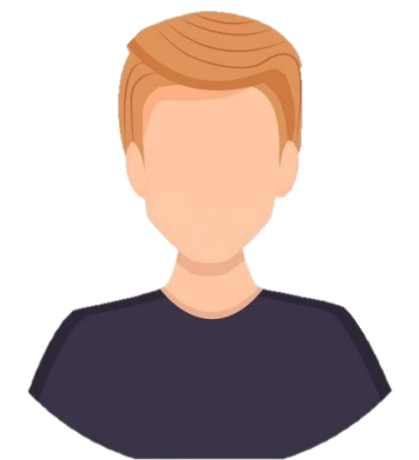
If your investment falls under OPI, your employer will handle all the necessary reporting. But if your investment qualifies as ODI (Overseas Direct Investment), you'll be responsible for reporting the transaction yourself.



The FEMA Gyani

Alright, in which form and how is its reporting done?

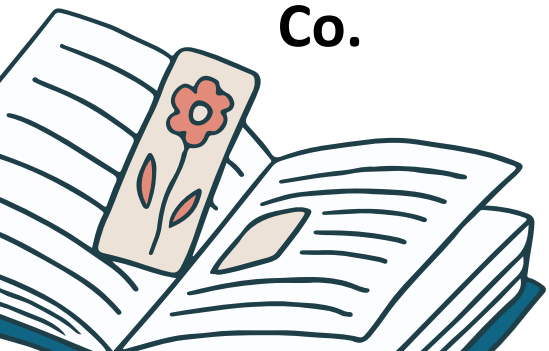
For entities qualifying as OPI, the company needs to file Form OPI, while for those qualifying as ODI, the employee needs to file Form FC and APR.



The FEMA Gyani



Bhaskar
Director of an Indian
Co.

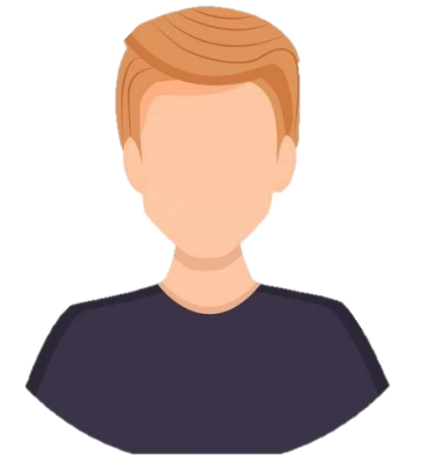




Bhaskar
Director of an Indian
Co.

Got it. And can a foreign company buy back the shares they issued to our employees under the ESOP?

Yes, they can, but there are three conditions. **First**, the initial issuance of shares must have followed FEMA rules. **Second**, the buyback needs to follow the terms of the ESOP plan. And finally, everything needs to be reported through an authorized bank.

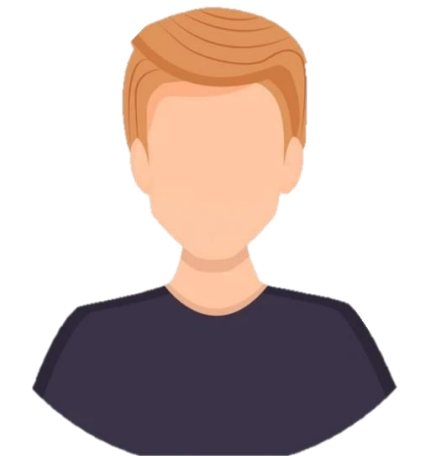


The FEMA Gyani



Bhaskar
Director of an Indian
Co.

Thank you so much, Mr. FEMA Gyani!

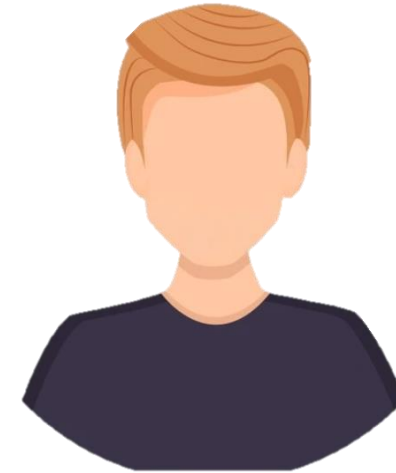
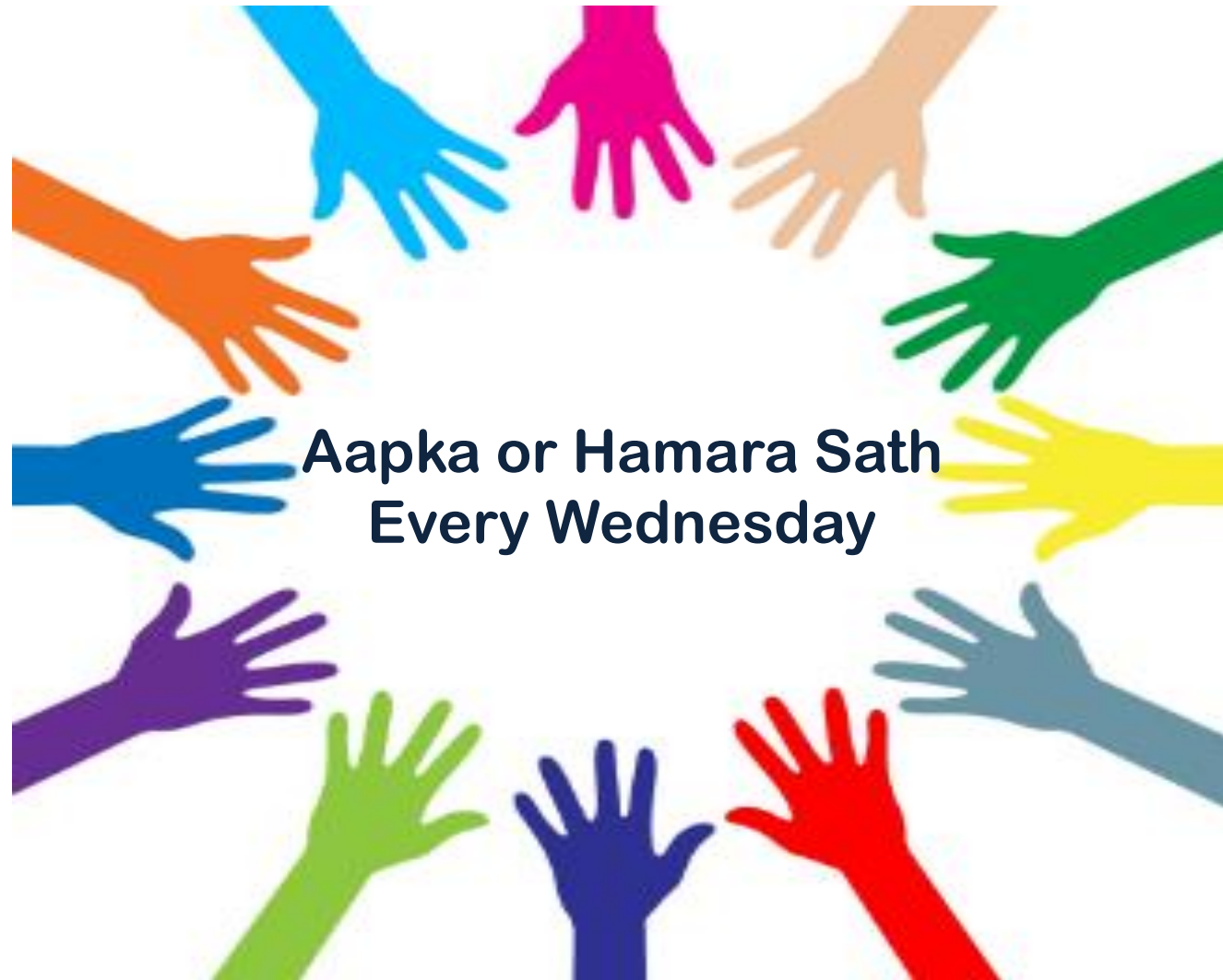


The FEMA Gyani

Happy to help, Bhaskar!



Thank You



The FEMA Gyani

Comments

Feedbacks

Suggestions



<https://in.linkedin.com/company/jsoca>

WEBSITE

<https://jainshrimal.com/>



International Tax Gyan   
WhatsApp group



Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.