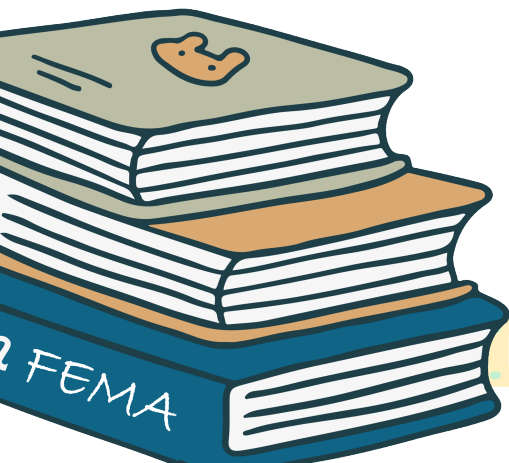


FEMA Ke Fundae

#FamiliarwithFEMA



Will Investment in
Foreign Entity be
always considered
as ODI?



Date: 25/09/2024

Issue no: 120





Namish

Hey! Mr. FEMA Gyani. My company wants to invest in the instrument of a US company named Automation Inc. The company is engaged in new age technology of Artificial Intelligence, machine learning etc. It is being claimed as the probable rival in the world of AI. My company is also engaged in the similar kinds of business and wants to invest in the instrument which gives them right to acquire shares of Automation Inc. Can my company do so? Will this be considered as an Overseas Direct Investment(ODI)?

Hii Namish. Can you explain a bit more about this arrangement to acquire this instrument?



The FEMA Gyani

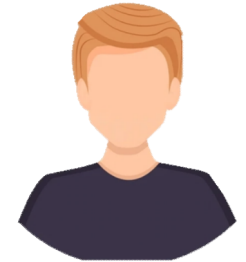


Namish

Sure. If the company raises money by selling shares (equity financing round), the investment we made will automatically turn into shares of the company. But if the company goes through a major event like being sold to another company (change of control) or going public (IPO), we will get our money back in cash, and the investment agreement will end.



No, Namish this will not be considered as an ODI. This means this is not allowed.



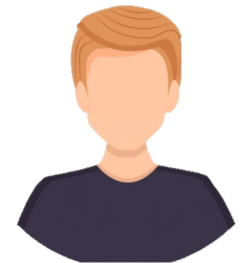
The FEMA Gyani

But why FEMA Gyani. My company will be investing in a foreign entity. Why shouldn't this be considered as an ODI? I thought any investment in the foreign entity is considered as ODI.



Namish

Let me brief you about the definition of ODI.



The FEMA Gyani



Overseas Direct investment means:

Acquisition of any unlisted **equity capital** or subscription as a part of the Memorandum of Association of a foreign entity

OR

investment in 10% or more of the paid-up **equity capital** of a listed foreign entity

OR

investment with control where investment is less than 10% of the paid-up **equity capital** of a listed foreign entity

As per the definition, The focus should be on the concept of ODI investment in **Equity Capital**.



Namish

FEMA Gyani can you explain what all are included under the term Equity Capital?

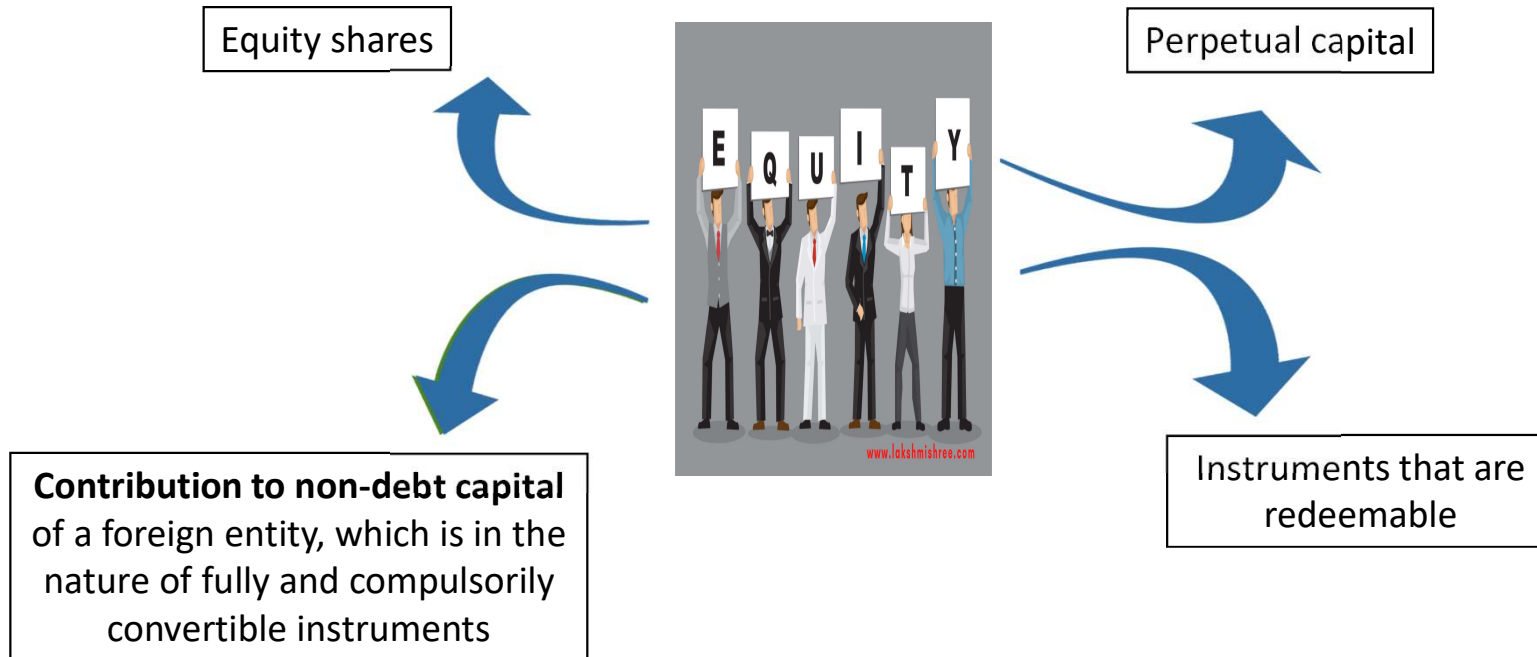


The FEMA Gyani





EQUITY CAPITAL



Based on the definitions of Overseas Direct Investment (ODI), investment can be made in Equity Capital. However, the specific instrument your company plans to invest in does not fall under the definition of Equity Capital. **Consequently, this type of investment will not be considered as ODI and is therefore not permissible.**



The FEMA Gyani

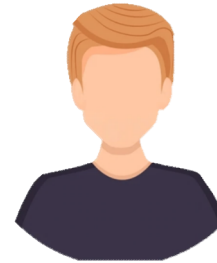
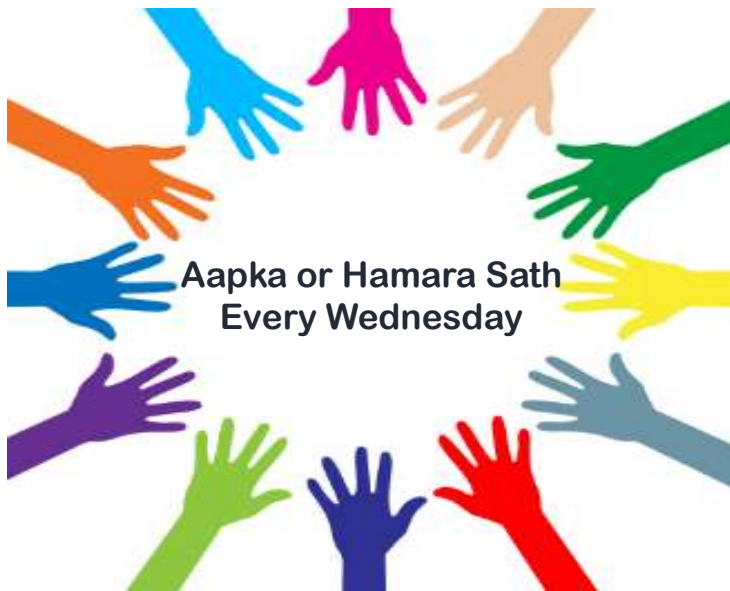


Namish

Okay, FEMA Gyani. I understood your point. Thank You.



Thank You



The FEMA Gyani

Comments

Feedbacks

Suggestions



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

WEBSITE

<https://jainshrimal.com/>



International Tax Gyan
WhatsApp group



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