

Change in Indian companies owned & controlled by NRIs

If they invest on non-repatriation basis, the investment will be considered as domestic investment



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Investment by non-resident Indians (NRIs) on a non-repatriation basis in an Indian company will be treated as domestic investment in the calculation of indirect overseas inflows, according to a DPIIT press note.

The Department for Promotion of Industry and Internal Trade (DPIIT) said the government has reviewed the FDI policy in relation to investments made by an Indian company owned and controlled by non-resident Indians (NRIs) on a non-repatriation basis.

“Post introduction of this clarification and upon making corresponding changes in FDI rules, even the companies that are incorporated in India and are owned and controlled by NRIs on non-repatriation basis should be able to make downstream investment without it being treated as indirect foreign investment,” Prashant Prakhar, leader, regulatory practice at Nishith Desai Associates said.

Apurva Jayant, partner, J Sagar Associates said “the change introduced is logical and clarificatory. Pending this clarification, there was an absurd position where NRI holding directly on non-repatriation basis was considered domestic, but investment through a company was not”.

The press note said to provide clarity on downstream investments made by NRIs, a clause has been added in the FDI policy. The clause was added in the guidelines for calculation of direct and indirect foreign investments.

It said that “investments by non-resident Indians (NRIs) on a non-repatriation basis” as stipulated under a schedule of Foreign Exchange Management (non-debt instruments) Rules 2019 “are deemed to be domestic investments at par with the investments made by residents”.