ACQUISITION OF IMMOVABLE PROPERTY OUTSIDE INDIA

In the era of globalization, investment in property overseas is becoming increasingly common these days. This trend owes much to the fact that overseas property has now become much more affordable for Indians. With many Indians finding their family scattered across the globe, many Indians are also buying properties abroad in order to visit their near and dear ones more easily.
Government policies have been steadily liberalizing overseas remittances, permitting more Indians and Indian-owned companies to transfer money abroad to purchase the property. Despite this more permissive attitude, such overseas investments remain subject to a number of legal conditions and regulations. Acquiring an immovable property outside India by a person resident in India is governed by the provisions of Foreign Exchange Management Act, 1999 along with the other applicable regulations and circulars of Reserve Bank of India (RBI).

In what ways can resident individuals and Indian Companies purchase property abroad without seeking RBI approval?

1. **Resident Foreign Currency (RFC)** Account Resident individuals can purchase property abroad using funds held in an RFC account without prior RBI approval.

2. **Jointly with non-resident relatives**: Resident individuals are also permitted to purchase property overseas jointly with a relative who is resident outside India, without prior RBI approval. However, the property must be purchased using funds that are already overseas, without any outflow of funds from India.

3. **Liberalised Remittance Scheme (LRS)**: By Resident Individual through remittances under the Liberalized Remittance Scheme (LRS) up to a fixed annual limit (USD 2,50,000) per resident individual, without prior RBI approval. In case members of a family pool their remittances to purchase a property, then the said property should be in the name of all the members who make the remittances.

   Individuals who wish to remit abroad funds in excess of the LRS limit can do so after obtaining RBI permission.

   At times, a wealthy investor is willing to purchase an immovable property outside India but due to the limits set above along with the applicability of complex provisions of Indian Law, he finds it difficult to make such a desired investment. The number of questions runs in his mind due to lack of awareness of applicable cross country rules & regulations. If all the relevant aspects in relation to such investment are not taken into consideration, the investment may turn out to be a huge loss. Like a Resident Individual may invest upto (USD 2,50,000) annually outside India to purchase immovable property, however, if four individuals of a family club together to make this investment, the threshold limit extends to USD 1,000,000/-

4. **By an Indian Company having overseas offices**, for housing its business or for the residence of its staff within the following limits prescribed for initial and recurring expenses, respectively:
    - 15 percent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 percent of the net worth, whichever is higher;
    - 10 percent of the average annual sales/ income or turnover during the last two financial years.

Tax Compliances

The tax implications of investing in a property abroad can be quite complex. Income from property investments abroad, generally invites tax in India, as well as the country in which the property is situated. One should also consider the stamp duty and estate duty implications, and other prevalent property taxes under the laws of the country, where the property is being purchased.

Solution

It is clear that persons resident in India now have several avenues through which they can invest in properties overseas. While a complicated regulatory framework still governs the purchase and sale by Indian residents of properties abroad.

Each of the above mentioned routes is subject to differing legal conditions and has differing tax implications, both in India and the foreign country. Purchasing property abroad therefore requires a certain amount of structuring to ensure that foreign property investments are both legal and tax efficient. Structuring a foreign property transaction correctly can greatly mitigate the risks involved with purchasing property abroad.

In the face of these challenges and unawareness with regard to procedural compliances to acquire immovable property outside India we “B2C Eventures Private Limited” have a dedicated team who possess extensive experience in various FEMA laws. We provide assistance and ensure that the buyer is well informed about the regulatory framework before acquiring any property.