



Proposed Free Trade Agreement between India & Australia

Access to Indian Property Market by PIO (Person of Indian Origin) who beneficially owned Australian SMSF:

Issue:

- 1- Govt of India does not allow Foreign Company who is trustee of SMSF even though beneficiary of SMSF funds are PIO (person of Indian Origin). But they allow PIO to own the property in their names.**
- 2- SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 (SIS Act) does not allow an Individual Trustee if he/ she is the only beneficiary in SMAF.**

Current Laws & it's requirements:

- 1- as per** Sub-sections (3), (4) and (5) of Section 6 of the Foreign Exchange Management Act, 1999 read with [Notification No. FEMA 21/ 2000-RB dated May 3, 2000](#).and press release BSC/BY/GN-1/09 dated **February 1, 2009**:

A PIO (Person of Indian Origin) can acquire by way of purchase any immovable property (other than agricultural land/ plantation property / farm house) in India.

A foreign company which has established a Branch Office or other place of business in India under the provisions of Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 (FEMA 22/2000-RB dated the 3rd May, 2000) can acquire immovable property in India which is necessary for or incidental to carrying on such activity, subject to the conditions stipulated in Regulation 5 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 (Notification No. 21/2000-RB dated the 3rd May, 2000).

Apart from above, a foreign national who is residing in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business / vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as he would be a 'person resident in India' as per section 2(v) of FEMA, 1999. To be treated as a person resident in India under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of preceding financial year) but also his purpose of stay as well as the type of Indian visa granted to him to clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with supporting documentation including visa.





As per the provisions contained in Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulation 21/2000 (Notification No. 21/2000-RB dated the 3rd May, 2000), an Indian citizen resident outside India and a Person of Indian Origin resident outside India may acquire immovable property in India other than agricultural land, plantation or a farm house.

2- If there is only one member in the fund – Individual cannot be a Trustee

Solutions:

- Recognition of 'Self-Managed Super Fund in Australia' as an Investing entity in India at least for PIOs (Person of Indian Origin).
- If Trustee of SMSF is a company, it should be allowed to get the property registered in India considering the fact that Only Beneficiaries could be the directors of the trustee company. All investments held by the SMSF trustees is purchased with the intention of providing benefits in retirement for the members, or
- Allow borrowings for Properties in the same way as the properties were in Australia.

Conclusion:

Australians have accumulated over \$1.4 trillion in superannuation assets. On per capita basis, more money invested in managed funds than any other economy. Australian SMSF needs more venue to invest to diversify the Investment and minimise risks.

- Recognition of Self-Managed Super Fund by Indian govt as appropriate investment vehicle even if they can allow for PIOs.
- Since ultimately beneficiaries will be Person of Indian Origin, Indian government will be able to maintain integrity of property ownership in India.
- It is common for many PIOs in their sunset years to spend a couple of months each year in their former homeland. This will enhance one to one contact between peoples of two country.
- Indian and foreign banks as well as financial institutions are also funding real estate in India making it even more lucrative for NRI's to invest in Indian real estate.

NB: Since it is a technical subject and require practical solution, you may require further clarification on the issue. If so please contact, CA Yateender Gupta – chairman@icai.org.au / Mob 0421 590 791.