

Transfer of Funds to & from India and its tax implications in India



Who is a NRI ?

Who is a NRI ?

As per Income Tax Act, 1961

Under Section 6(1), an individual is said to be resident in India in any financial year if he satisfies any one of the following basic conditions:

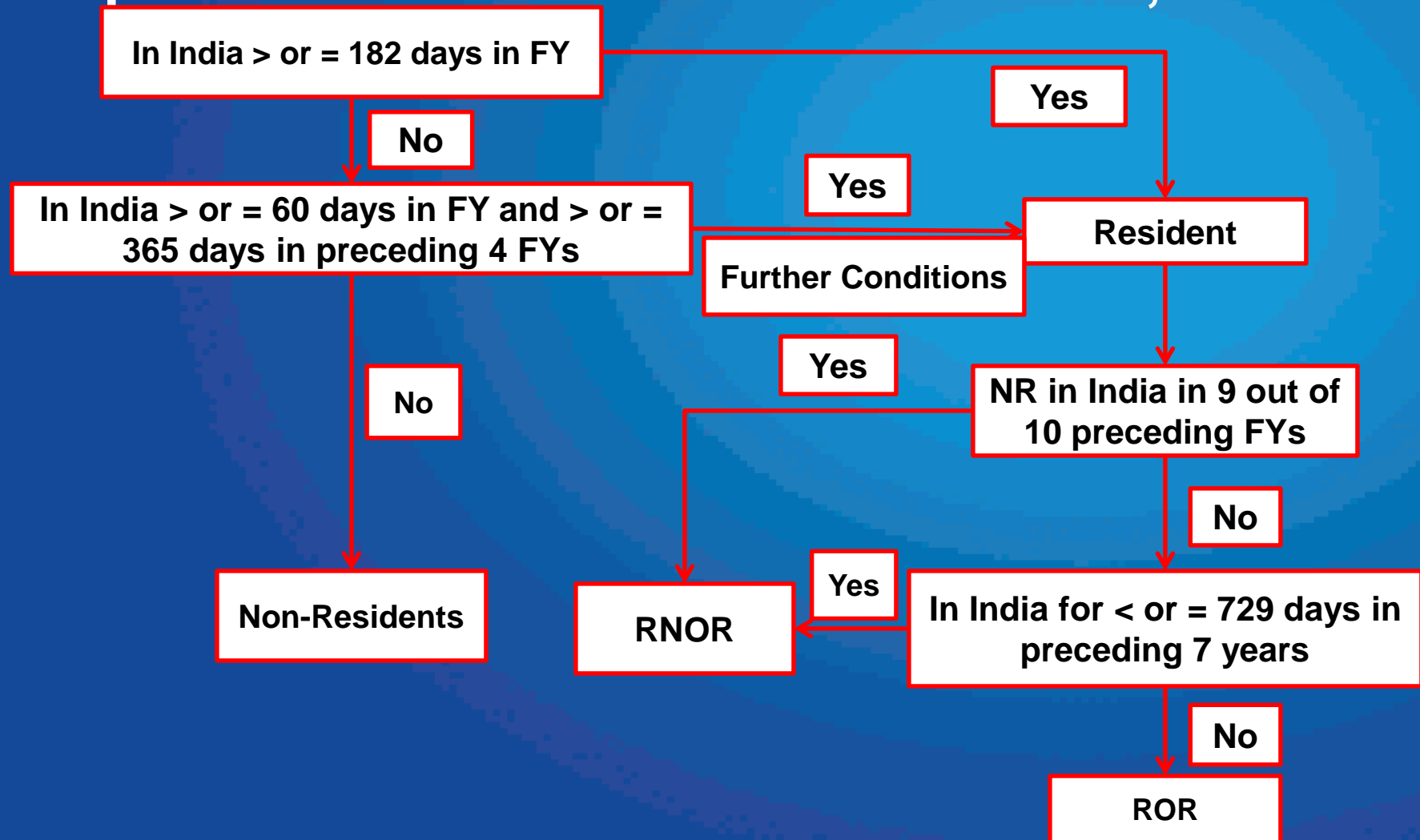
- (a) He is in India for a period of 182 days or more in the previous year *OR*;
- (b) He is in India for a period of 60 days or more during the relevant previous year and 365 days or more during the four years preceding that previous year.

Exceptions:-

- i) An Indian citizen leaves India for employment abroad for the purpose of employment or
- ii) An Indian citizen leaving India as a member of the crew of an Indian ship, or
- iii) An Indian citizen or a person of Indian origin, who has settled abroad, comes on a visit to India.

Who is a NRI ?

Graphical Presentation - Income Tax Act, 1961 :



Who is a NRI ?

I) As per FEMA (Foreign Exchange Management Act)

A) A person residing in India for more than 182 days during the course of preceding financial year but does not include :

A person who has gone out of India or who stays outside India, in either case -

- for or on taking up employment outside India; or
- for carrying on a business or vocation outside India; or
- for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Who is a NRI ?

I) As per FEMA

A person who has come to or stay in India, in either case, otherwise than –

- for or on taking up employment inside India; or
- for carrying on business or vocation in India, or
- for any other purpose in such circumstances as would indicate his intention to stay in India for an uncertain period.

Person other than the above is a Non Resident

B) Students going abroad are treated as NRI under RBI Circular : AP (DIR Series) Circular No. 45 December 8, 2003.

Who is a NRI ?

II) Overseas Citizens of India (OCI)

Following categories of Foreign National can be considered as “OCI” and can apply for OCI Card.

1. For person who are of full age.
 - A. Citizen of India on or after 26.01.1950, or
 - B. Eligible to became citizen of India on 26.01.1950, or
 - C. Belonged to a territory that became part of India after 15.08.1947, or
 - D. Child or a grandchild or a great grandchild of such a citizen, or
2. Minor child of such persons mentioned above.

Who is a NRI ?

II) Overseas Citizens of India (OCI)

3. Who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India, or
4. Spouse of foreign origin of a citizen of India of spouse of foreign origin of an OCI Card holder. The marriage has to be registered and subsisted for a continuous period of not less than two years

However persons who have ever been citizens of Pakistan & Bangladesh cannot be considered as OCI & cannot apply for OCI Card.

Who is a NRI ?

- ✓ For the purpose of banking in India, all who are covered by definition under FEMA and all who are eligible for OCI Card, are considered as NRIs.
- ✓ There are different definitions of NRI & PIO in the various regulations issued by RBI under the FEMA Act, 1999.

Who is a NRI ?

As per Citizenship Act

- 1 Citizenship by Birth : Birth in India
- 2 Citizenship by Descent : Birth outside India & parents of Indian origin.
- 3 Citizenship by Registration : Person of Indian origin returning to India.
- 4 Citizenship by Naturalisation : Foreign Nationals who wants to acquire citizenship.

Citizen under the Citizenship Act makes him / her eligible for passport of that country.

Who is a NRI ?

Conflict between the Provisions

Residential status...

1. As per Income Tax Act :- based on the number of days.
2. As per FEMA :- based on the conduct & intention of the person.
3. Eligibility for OCI :- based on conclusive tests for claiming oneself as PIO.
4. As per Citizenship Act :- based on birth & applying for citizenship.

Basics of NRI Taxation

Basics of NRI Taxation

Basics of taxation

- ✓ Residence Rule.
- ✓ Source Rule.

Basics of NRI Taxation

Double Taxation Avoidance Agreement (DTAA)

- ✓ Double Taxation Avoidance Agreement (DTAA) is an agreement entered into between countries, between India and another foreign state. The basic objective is to avoid, taxation of income in both the countries (i.e. Double taxation of same income) and to promote and foster economic trade and investment between the two countries.
- ✓ India has DTAA with over 89 countries such as the US, the United Kingdom, the UAE, Canada, Australia, Saudi Arabia, Singapore and New Zealand, Kenya, Tanzania, South Africa, Sudan etc.

Basics of NRI Taxation

Double Taxation Avoidance Agreement (DTAA)

- ✓ Relief is granted on the basis of FTC (Foreign Tax Credit) or Exemption method as provided in the respective DTAA.
- ✓ Section 91 provides relief to tax payers who have paid tax to a country with which India has not signed a DTAA.

Basics of NRI Taxation

Indian Income

- ✓ Income received or accrued or arised in India.

Foreign Income

- ✓ Income not received nor accrued nor arises from India.

Exceptions:-

1 CBDT Circular-

Income received in Indian Bank Account for Seafarers working on ships - Foreign Income.

2 Pramod Kumar Sapra VS ITO 87 Taxmann 98 (Del.ITAT)

Basics of NRI Taxation

	Resident and ordinarily resident in India (R & OR)	Resident but not ordinarily resident in India (R but not OR)	Non-resident in India (NR)
Indian income	Taxable	Taxable	Taxable
Foreign Income	Taxable	Non Taxable	Non Taxable
Income from business or profession accruing or arising outside India, but business controlled from India or a profession setup in India	Taxable	Taxable	Non Taxable

Basics of NRI Taxation

Taxation of Indian Income in India and US

Income	Taxation in India	Taxation in US
Interest in NRO A/C	Taxable as per normal tax rate	Taxable as per normal tax rate
Interest in NRE A/C	Exempted as per Section 10(4)	Taxable as per normal tax rate
Sale of Agricultural land	Exempted u/s 10(37) subject to certain condition	Short Term- normal tax rate Long term - As per slab

Basics of NRI Taxation

Taxation of Indian Income in India and US

Income	Taxation in India	Taxation in US
Sale of plot of land	Short Term- normal tax rate Long Term- 20% (after Indexation)	Short Term- normal tax rate Long term - As per slab
Sale of Residential House	Short Term- normal tax rate Long Term- 20% (after Indexation)	Short Term – normal tax rate Long term – As per Slab
Share in Partnership Firm	Exempted u/s 10(2A)	Taxable as per ordinary tax rate

Basics of NRI Taxation

Taxation of Indian Income in India and US

Income	Taxation In India	Taxation in US
Dividend from Mutual Fund	Exempted U/S 10(35), however Mutual Funds companies are required to pay DDT	Taxable as per ordinary tax rate. Tax credit of DDT is not available.
Agricultural Income	Exempted u/s 10(1)	Short Term- normal tax rate Long term - As per slab

Basics of NRI Taxation

Taxation of Indian Income in India and US

Income	Taxation In India	Taxation in US
Sale of Shares – Listed	Short term – 15% Long term - Exempted upto Rs.1,00,000/-. Above that – 10%	Short Term- normal tax rate Long term - As per slab
Sale of Shares – Unlisted	Short Term- normal tax rate Long term- 10% (without indexation & FCF)	Short Term- normal tax rate Long term – As per Slab

Basics of NRI Taxation

Taxation of Indian Income in India and US

Income	Taxation in India	Taxation in US
Mutual Fund Investment – Debt	Short Term – Normal tax rate Long Term(Listed)- 20% (with indexation) Long Term(Unlisted)-10% (without indexation & FCF)	Treated as PFIC Investment and taxation accordingly
Mutual Fund Investment – Equity	Short term – 15% Long term-Exempted upto 1,00,000/-. Above that – 10%	Treated as PFIC Investment and taxation accordingly
Dividend from Shares	Exempt U/S 10(34), However company is required to pay DDT.	Taxable as per ordinary Tax rate. Tax credit of DDT is not available.

Basics of NRI Taxation

Taxation of Indian Income in India and US

Long Term Capital Gain Tax Rate in US :

Tax Bracket of Federal Tax Rate	Long Term Capital Gain
10-15%	Nil
25-35%	15%
Above 35%	20%

Holding Period of assets in US :

Type of Tax	Holding Period
Short Term Capital Gain	Less than 1 Year
Long Term Capital Gain	More than 1 Tear

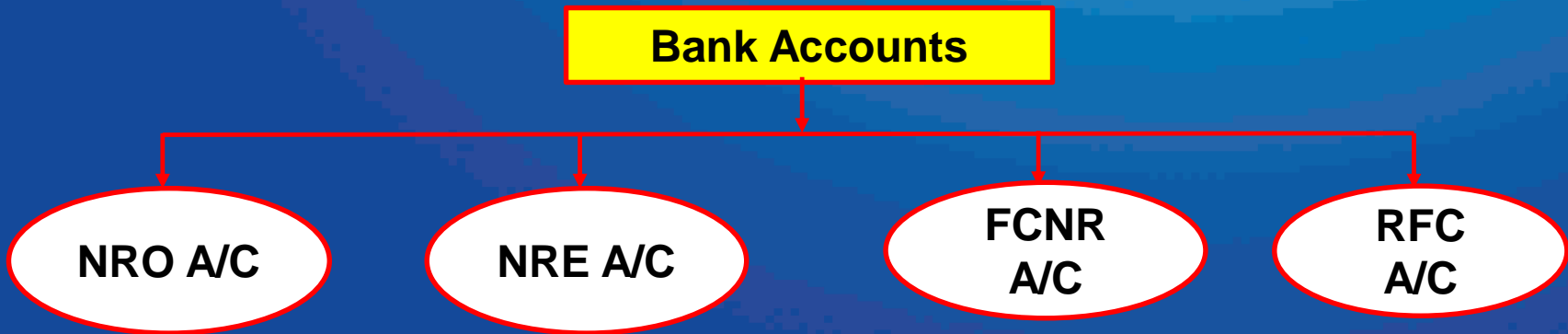
Basics of NRI Banking

Basics of NRI Banking

INTRODUCTION :

- ✓ In India, definition of NRI as per FEMA regulations and all who are eligible for OCI Card will be considered as NRI for various types of Bank accounts in India.
- ✓ NRI are not allowed to keep Resident Indian savings account in India.
- ✓ Either the savings account is to be closed or converted in NRO account.

TYPES OF BANK ACCOUNT :



Banking Regulations for NRI

Bank Accounts by NRI :

NRO Account :

- ✓ Non-repatriable rupee account.
- ✓ When Resident Indian becomes NRI his existing account changes to NRO, banks need to be informed.
- ✓ Credits and debits of Non-repatriable funds.
- ✓ The income from the account is taxable under Income Tax.
- ✓ Joint account with another NRI / PIO or with resident can be opened.
- ✓ Loan available against this account in Indian Rupees.

Banking Regulations for NRI

Bank Accounts by NRI :

NRE Account :

- ✓ Remittance from abroad or other NRE or FCNR Accounts.
- ✓ Balance held in rupees but are repatriable.
- ✓ Proceeds on maturity of repatriable assets can be credited.
- ✓ Foreign exchange can be credited by NRI himself.
- ✓ The income from the account is exempted from Income Tax.
- ✓ Loan can be availed against the balances in this account, in Indian Rupees.
- ✓ Joint account with another NRI/PIO or with resident relative* can be opened.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Definition of Relative / Close Relative

As per Companies Act for FEMA & RBI regulations

- ✓ Husband & wife.
- ✓ Father & Mother.
- ✓ Brother & Sister.
- ✓ Son, Daughter & their Spouse.
- ✓ Members of HUF.

Banking Regulations for NRI

Bank Accounts by NRI :

FCNR Accounts :

- ✓ Deposits in specified foreign currencies.
- ✓ Different Interest rates for holding deposits in different currency. Swap between currencies possible.
- ✓ Transfer to NRE and vice versa possible.
- ✓ The income from the account is exempted from Income Tax.
- ✓ Loan can be availed against the balances in this account, in Indian Rupees and specified foreign currency.
- ✓ Joint account with another NRI / PIO or with resident relative* can be opened.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Banking Regulations for NRI

Bank Accounts by NRI :

RFC Account :

- ✓ This account can be maintained by returning NRIs.
- ✓ This account can be opened and maintained in any convertible foreign currency.
- ✓ The income from this account is exempted from Income Tax for individual under 'R but not OR' status.
- ✓ Loan not available against this account.
- ✓ Credits of foreign exchange assets, NRE & FCNR balances.

Banking Regulations for NRI

Account type	Domestic / Resident Account	Non Resident Ordinary (NRO) Account	Non Resident External (NRE) Account	Foreign Currency Non Resident (FCNR - B) Account
NRI	Not Permitted	Permitted	Permitted	Permitted
Foreign Nationals on employment in India	Permitted	Not Permitted	Not Permitted	Not Permitted
Foreign Students studying in India	Not Permitted	Permitted	Not Permitted	Not Permitted
Foreign Tourists on short visit to India	Not Permitted	Permitted	Not Permitted	Not Permitted

Transfer of Funds for Importing of Goods (Capital & Consumption) and Services

Transfer of Funds for Importing of Goods & Services

Based on RBI/FED/2016-17/12

FED Master Direction No. 17/2016-17

Time Limit for transfer/ payment for Import

Particulars	Time Frame
Payment Terms	Within six months from import.
Extension by AD banks	For six months at a time, but not beyond three years.
	If it is due to some disputes, financial difficulties. Interest should not be for more than three years

Note : AD banks are allowed to make payment to a third party for import of goods, the transaction has to be genuine and the same has to be declared beforehand.

Transfer of Funds for Importing of Goods & Services

Based on RBI/FED/2016-17/12

FED Master Direction No. 17/2016-17

Advance payment for Imports

Particulars	Time Frame
Payment for Import of Goods	Permitted. If amount exceeds US\$ 200,000, then irrevocable LOC or guarantee from international bank is required
Payment for Import of Services	Permitted. If amount exceeds US\$ 500,000, then irrevocable LOC or guarantee from international bank is required

Note : The beneficiary of the advance remittance should fulfill the obligation under the contract or agreement with the remitter in India, failing which the amount should be repatriated to India.

Transfer of Funds for Importing of Goods & Services

Provision under the Income Tax Act, 1961 :

- ✓ Applicable – To a person who makes any payment to non resident assessee.
- ✓ The above mentioned provisions are not applicable, if the non resident or foreign company does not have any business connection in India. For Example – Import of goods & services from abroad.
- ✓ The person is required to deduct TDS at the rate applicable as per section 195 of the act.
- ✓ The maximum amount of the tax is 30%, plus surcharge, if applicable and cess - 4%.

Transfer of Funds for Importing of Goods & Services

Payment of Equalisation Levy :

✓ Any payment made by

- A person resident in India & a non resident having a permanent establishment in India and carrying on business or profession .

To

any non resident for specified services.

- ✓ Specified services - online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf.
- ✓ The person is required to deduct levy @ 6%, if the amount exceeds Rs. 1,00,000/-.
- ✓ Incomes subjected to the same are exempted from Income Tax.

Transfer of Funds for Exporting of Goods (Capital & Consumption) and Services

Transfer of Funds for Exporting of Goods & Services

Based on RBI/FED/2015-16/11

FED Master Direction No. 16/2015-16

Export	Time Period
Goods Exported to warehouse established outside India	<u>Within 15 months</u> from Export.
Others	<u>Within 9 Months</u> from the date of export.
Extension	AD extend period for six months, according to circumstances of the case.

Transfer of Funds for Exporting of Goods & Services

- ✓ Every Exporter has to File Declaration of Exports along with the documentary evidence.
- ✓ If an exporter is unable to realise the export proceeds for reasons beyond his control, he may approach RBI for writing of unrealised amount.
- ✓ The Export proceeds should be realised in convertible foreign exchange.

Advance Against Export :

- ✓ Exporter can receive advance against the export from the customer.
- ✓ Shipment of the goods to be made within one year from the date of receipt of advance payment.
- ✓ The authorised dealer can also allow exporters to receive advance where the goods would take more than one year to manufacture and it is mentioned in the export agreement.

Transfer of Funds for Exporting of Goods & Services

Receipt of Exports :

✓ Amount can be received :

- In the form of Bank draft, cheque, pay order, foreign currency notes / travellers cheque from a buyer during his visit to India.
- By debit to NRE/FCNR account of the buyer in India.
- From a third party where the transaction has to be genuine and has to be declared beforehand.
- In Rupees from the credit card serving bank in India.

✓ Refund of Export Proceeds :

AD through whom export proceeds were realised, may allow refund of export proceeds of goods exported from India and re-imported into India.

Transfer of funds by Returning NRI

Transfer of Funds by Returning NRI

- ✓ When an Non resident Indian returns to India with intention to stay permanently then the status changes from Non Resident Indian to Resident Indian.
- ✓ The Non Resident can transfer their funds from foreign bank account to their NRO / NRE account before coming to India permanently.

Transfer of Funds by Returning NRI

- ✓ On arrival to India the status of their bank account changes to Resident accounts as mentioned below.

Old Bank Account	New Bank Account
NRO Account	Resident Saving Account
NRE Account	Resident Savings account or Resident Foreign Currency Account (RFC) Account
FCNR Account	RFC Account

- ✓ Note : The intention of living in India is for permanent period and not for temporary stay.

Transfer of Funds by Returning NRI

Foreign Assets :

- ✓ NRI returning to India for permanent settlement may continue to hold or own all types of foreign Assets such as foreign currency, foreign securities, bank deposits, Immovable properties if the same were held/owned by them when he was residing abroad for unlimited amount and for unlimited period, irrespective of the amount.
- ✓ They are also allowed to gift such acquired property to any relative* including the person who is resident of India.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Transfer of Funds by Returning NRI

Foreign Assets :

- ✓ Returning NRI are also allowed to purchase and sale the above mentioned foreign assets. However the payment for such purchase is to be made from Resident Foreign Currency (RFC) account maintained with bank in India for unlimited amount and for unlimited period, irrespective of the amount.
- ✓ An resident holding any foreign assets or has signing authority in any foreign account is compulsorily required to file the income tax return irrespective of the amount of taxable income under Section 139(1).

Transfer of Funds by Returning NRI

Taxability of Returning NRI Bank Interest Income

Account	R & OR	R but NOR	Non Resident
FCNR Account Deposit converted to RFC Account	Taxable	Exempt	Exempt
NRE Account converted to Resident savings Account	Taxable	Taxable	Not Applicable
NRE Account converted to RFC Account	Taxable	Exempt	Not Applicable

Transfer of Funds by Returning NRI

Taxability of Returning NRI Bank Interest Income

- ✓ NRI are allowed to hold the FCNR and NRE deposit till maturity with the same interest rate, but not as FCNR & NRE Deposits. They can hold these deposits under RFC account.
- ✓ Interest is taxable in India from the date of return to India deduction under Sec. 10(4) of IT Act not available to RI. If NRE deposits converted to RFC account, then interest income is exempted from tax till the NRI holds R but not OR) status.

Loans & Gifts by Residents to Non Resident

Liberalised Remittance Schemes (LRS)

Liberalised Remittance Schemes (LRS)

Regulations of LRS :

RBI Regulation No – RBI/FED/2017-18/3

FED Master Direction No . 7/2015-16

- ✓ As per the above mentioned regulation of Liberalised Remittance Scheme (LRS), a resident individual can remit upto US\$ 250,000 per financial year for permitted Capital & Current account transaction.
- ✓ The Capital & Current account transaction includes:-
 - Investments, Opening Bank account, buying property abroad.
 - Private visits/ business trips.
 - Going abroad for employment.
 - Emigration.
 - Maintenance of close relatives* abroad.
 - Medical treatment of relatives* abroad.
 - Expenses for students studying abroad.
 - To give loans & gifts as per prescribed conditions.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Liberalised Remittance Schemes (LRS)

Regulations of LRS :

RBI Regulation No – RBI/FED/2017-18/3

FED Master Direction No . 7/2015-16

- ✓ This scheme is available only to individual and not to corporates, partnership firms, HUF, Trusts.
- ✓ Release of Foreign Exchange exceeding US\$ 250,000 requires prior approval of RBI.
- ✓ However, in case of medical treatment and studies abroad amount exceeding US\$ 250,000 can be remitted on the basis of estimate from the hospital or institution. In that case, approval from RBI is not required.

Liberalised Remittance Schemes (LRS)

Regulations of LRS :

- ✓ Form No. 15 CA & 15 CB is not required for transfer of funds under LRS (CBDT Press Release dt. 17/12/2015).
- ✓ PAN card is compulsory for the remittance by resident individual under the scheme.

Liberalised Remittance Schemes (LRS)

Loan by Residents in Indian Rupees to Close Relative* :

RBI Regulation No – RBI/FED/2017-18/3

FED Master Direction No . 7/2015-16

As per the above mentioned regulation of Liberalised Remittance Scheme (LRS), a resident individual can lend to a Close Relative* NRI/PIO by way of crossed cheque / electronic transfer subject to the following conditions :

- ✓ The loan amount should be credited to the NRO A/c of the NRI.
- ✓ The loan amount shall not be remitted outside India.
- ✓ Loan amount should be within the overall limit under Liberalized Remittance Scheme (LRS) of US\$ 250,000 per financial year.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Liberalised Remittance Schemes (LRS)

Loan by Residents in Indian Rupees to Close Relative* :

RBI Regulation No – RBI/FED/2017-18/3

FED Master Direction No . 7/2015-16

- ✓ Loan is free of interest.
- ✓ Minimum maturity of the loan is one year.
- ✓ Loan should be utilized for meeting the borrower's personal requirements or for his own business purposes in India.
- ✓ The loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited in certain sectors.
- ✓ Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the NRO / NRE / FCNR account of the borrower.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Liberalised Remittance Schemes (LRS)

Gifts by Residents in Indian Rupees to Close Relative* :

RBI Regulation No – RBI/FED/2017-18/3

FED Master Direction No . 7/2015-16

As per the above mentioned regulation of Liberalised Remittance Scheme (LRS), a resident individual can gift to an Close Relative* NRI/PIO by way of crossed cheque / electronic transfer subject to the following conditions:

- ✓ The amount should be credited to NRO Account.
- ✓ Gift amount should be within the overall limit under Liberalized Remittance Scheme(LRS) of US\$ 250,000 per financial year. Donor's responsibility to ensure that amount of gift is within the limit of LRS.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Liberalised Remittance Schemes (LRS)

Gifts by Residents to person's Abroad :

RBI Regulation No – RBI/FED/2017-18/3
FED Master Direction No . 7/2015-16

As per the above mentioned regulation of Liberalised Remittance Scheme (LRS), a resident individual can gift person residing outside India subject to the following conditions:

- ✓ The amount of gift is to be given in Foreign Currency.
- ✓ Gift amount should be within the overall limit under Liberalized Remittance Scheme (LRS) of US\$ 250,000 per financial year.
- ✓ The gift can be given to Non Relative* also.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Liberalised Remittance Schemes (LRS)

Final Summary

Tabular presentation of Gifts & Loan by
Resident Indian to NRI

Particulars	Relatives	Others
Loan in Indian Rupees	Permitted To NRO A/c	Not permitted
Gifts in Indian Rupees	Permitted To NRO A/c Non Taxable	Not permitted
Loans in Foreign Currency	Not Permitted	Not Permitted
Gifts in Foreign Currency	Permitted	Permitted Taxable

Loans by NRI/PIO

Loans by NRI/PIO

On Repatriable Basis In Foreign Currency :

RBI Regulation No – RBI/FED/2015-16/15

FED Master Direction No . 5/2015-16

As per the above mentioned RBI Regulation, Loan can be given by NRI/PIO to their close relative* in Foreign Currency subject to below mentioned condition :

- ✓ The amount of the loan should not exceed US\$ 250,000.
- ✓ Loans can be from remittances, NRE, FCNR A/cs in Foreign Currency.
- ✓ Minimum maturity period of loan is 1 Year.
- ✓ Loan is free of interest.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations

Loans by NRI/PIO

On Non Repatriable Basis in Indian Rupees :

RBI Regulation No – RBI/FED/2015-16/2
FED Master Direction No . 6/2015-16

As per the above mentioned RBI Regulation, Loan can be given by NRI/PIO to their Resident Individual in INR subject to below mentioned condition :

- ✓ Loans can be from remittances, NRO, NRE, FCNR A/cs.
- ✓ Loan period not to exceed 3 years.
- ✓ Rate of Interest not to exceed 2% over the Bank Rate (Repo Rate).

Loans by NRI/PIO

On Non Repatriable Basis in Indian Rupees :

RBI Regulation No – RBI/FED/2015-16/2
FED Master Direction No . 6/2015-16

- ✓ Repayment in NRO A/c.
- ✓ However, the funds lying in NRO Account can be remitted up to US\$ 1 Million abroad or to NRE Account.

Gifts by NRI/PIO to Residents in India

Gifts by NRI/PIO to Residents in India

Implications under FEMA, 1999

Gift by NRI /PIO from NRO & NRE Account

- ✓ NRI/PIO can gift to Resident from their NRO / NRE account, by remittance, in India.
- ✓ However, the POA holder is not authorised to sign the cheque for the transaction relating to gift. Cheque is to be signed by the account holder only.
- ✓ NRI/PIO can even gift cash to Residents (Sec. 9 FEMA). Resident cannot retain currency more than US\$ 2000 or equivalent.

Gifts by NRI/PIO to Residents in India

Implication under the Income Tax Act, 1961

Section 56(2) of the IT Act , 1961

- ✓ There is no gift tax in India, However gift is taxable in the hands of recipient in certain conditions.
- ✓ The amount of gifts in aggregate is in excess of Rs. 50,000 per financial year.
- ✓ If the amount of gift exceeds Rs. 50,000, entire amount is taxable under the head “Income from other sources”.
- ✓ The exceptions to it is, gifts received from relatives (as defined under the Income Tax Act Sec. 56(2)) is exempted.

Definition of Relative

As per Income Tax Act

- ✓ Spouse of the individual.
- ✓ Brother or sister of individual or of spouse.
- ✓ Brother or sister of either parents.
- ✓ Lineal ascendant / descendant of individual or of spouse.
- ✓ Spouse of relatives mentioned above.

Gifts by NRI/PIO to Residents in India

Implication under the Income Tax Act, 1961

Section 68 of the IT Act , 1961

- ✓ Section 56 & 68 are independent in operation.
- ✓ Though the gift is exempted under Section 56, Section 68 of Income Tax act, has still to be satisfied.
- ✓ As per Section 68, “any sum of fund is credited in the books of assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in opinion of the Assessing officer satisfactory the sum so credited may be charged to income tax as the income of the assessee of that pervious year.”

Gifts by NRI/PIO to Residents in India

Implication under the Income Tax Act, 1961

How to comply with Section 68 of the IT Act, 1961

- ✓ An assessee is required to prove the below mentioned details from whom gift is received
 - Identity of the person.
 - Creditworthiness of the person.
 - Genuineness of the transaction.
- ✓ The documents required to prove the above mentioned details vary from case to case basis.

Gifts by NRI/PIO to Residents in India

Implication under the Income Tax Act, 1961

- ✓ Rate of tax for incomes made taxable U/s. 68 has been prescribed U/s. 115 BBE.
- ✓ The prescribed rate U/s. 115 BBE are :
 - 60% + 25% Surcharge = 77.25% (If disclosed in the Return of Income).
 - 77.25% + 10% of tax payable (Penalty U/s. 271AAC) = 83.25%. (In case of detection during the Assessment Proceedings).
- ✓ Can invite prosecution (Imprisonment & Fine) U/s. 276C(1), 277, 277A of the Income Tax Act.

Liberalised Remittance Schemes (LRS)

Final Summary

Tabular presentation of Gifts & Loan by
NRI to Resident Indian

Particulars	Relatives	Others
Loan in Indian Rupees	Permitted	Permitted
Gifts in Indian Rupees	Permitted	Permitted
Loans in Foreign Currency	Permitted	Not Permitted
Gifts in Foreign Currency	Permitted	Permitted

Transfer of Funds from NRO A/c to NRE A/c or Out of India

Transfer of Funds from NRO A/c to NRE A/c or Out of India

Transfer of NRO Funds to a NRE A/c or out of India (RBI/2011 – 12/536 AP. (DIR Series) Circular No. 117.

NRI can avail the benefit of transferring funds from NRO A/c to the extent of US\$ 1 million per person per year to NRE A/c or out of India.

Requirements :

- ✓ Taxes due on funds supposed to be transferred should be paid.
- ✓ Simple procedure need to be followed for the transfer.

Transfer of Funds from NRO A/c to NRE A/c or Out of India

Benefits of Fund Transfer from NRO A/c to NRE A/c

- ✓ Amounts in NRE Account is Tax Free.
- ✓ TDS would not be applicable on the interest income from NRE Account.
- ✓ The balances in the NRE Account are fully repatriable.
- ✓ Repatriation can be done at the ease of Account holder to avail the benefit of comfortable exchange rate.

Transfer of Funds from NRO A/c to NRE A/c or Out of India

Benefits of Fund Transfer from NRO A/c to NRE A/c

- ✓ The circular of Government for transfer of funds from NRO to NRE or abroad is just relaxation given to NRI. It is not an obligation of the government to allow such transfer. However, the transfer of money from NRE to abroad is an obligation of the government.
- ✓ The funds lying in NRE Account can be easily remitted to the country of residence without any limits and formalities.

Concluding comments

- ✓ The winds of change blowing in the world.
- ✓ Ease of compliance in India.
- ✓ Do not evade compliance.
- ✓ Invest in India Growth story.

Jai Ho India

Dr. Manmohan Singh the then Finance Minister on 24 July, 1991, presenting the Union Budget for the Year 1991 – 92 in his speech had said.....

यूनान, मिश्र, रोम सब मिट गये जहां से
अब तक मगर बाक़ी है नामो - निशाँ हमारा

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This Presentation aims to tell the General Views and Laws related to Non Resident Indian (NRIs).

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	22 December, 2018 (Saturday)	Hotel Imperial Palace, Rajkot
Various kinds of incomes in India by NRI and its tax implications in India. Overview of FATCA, FBAR and CRS	19 January, 2019 (Saturday)	Hotel Imperial Palace, Rajkot
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