



INHERITANCE OF INDIAN ASSETS, BY NRI & TO NRI AND ITS TAX IMPLICATIONS IN INDIA

A world map is shown in the background, with India highlighted in a darker shade of blue. The map is overlaid with a grid pattern.

NRI Assets Scenario – Assets in India & Assets outside India

Global Assets of a NRI

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graph TD; A[Global Assets of a NRI] --> B[Assets out of India]; A --> C[Assets in India]; B --> D["Transmission (Inheritance) of assets governed by laws of respective foreign country"]; C --> E["Transmission (Inheritance) of assets governed by laws of India"];
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Assets out of India

**Transmission
(Inheritance) of assets
governed by laws of
respective foreign
country**

Assets in India

**Transmission
(Inheritance) of assets
governed by laws of
India**

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Law of Succession in respect of Indian Assets

Law of Succession in respect of Indian Assets

On death of a person – Succession operates

Testamentary Succession

- ✓ **The Indian Succession Act**
- ✓ **Muslim Shariat Law**

Intestate Succession

- ✓ **Hindu Succession Act**
Hindu, Shikhs, Jain & Buddh
- ✓ **Muslim Shariat Law**
Muslim
- ✓ **The Indian Succession Act**
Christian, Parsi

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What is Testamentary Succession ? & How does it operate in case of NRI ?

Testamentary Succession – in case of NRI

- ✓ When assets are bequeathed on the basis of a Will, it is called as testamentary Succession.
- ✓ A Will valid under the Indian Succession Act, has to be made in respect of Indian Asset.
- ✓ A Will in respect of Gobar Assets (Foreign + Indian Assets) is valid in India for Indian Assets, if it contains all the essential elements of a valid Will.

Testamentary Succession – in case of NRI

Essential of a valid WILL

- ✓ Will has to be in writing.
- ✓ Identification of the person executing the Will.
- ✓ Details of the assets to be bequeathed under the Will.
- ✓ Names and details of the beneficiaries under the Will, to whom assets are to be bequeathed.
- ✓ Signature of the person executing the Will, with date.
- ✓ Signature of two adult witness with their

identification

Testamentary Succession – in case of NRI

Care to be taken when Will executed out of India

- ✓ Person signing the Will is advised to sign before Notary Public in the country where the Will is to be executed.
- ✓ It is advisable to execute declaration of the two witnesses confirming the fact that they are the witness of the Will. This can be filed in court at the time of obtaining the probate.
- ✓ Execution of the Will will take place in India, hence the executor has to come to India.

Testamentary Succession – in case of NRI

Final step in – Testamentary Succession

- ✓ Executor or Beneficiaries to make application before the Court along with Will to obtain a probate.
- ✓ Court will demand declaration from witness & legal heirs. Court will issue public notice.
- ✓ Court will issue a letter of administration with Will (Probate), which will make Will a conclusive document.

Testamentary Succession – in case of NRI

Effect of Nomination / Joint Holder (E or S)

- ✓ On death of the holder of such assets transmission of assets needs to be done in favour of the Nominee / Joint Holder (E or S).
- ✓ Nominee / Joint Holder (E or S) is not the owner of the assets, he is merely a Custodian / Trustee. The real owner of the asset is the one who is the beneficiary under the Will in case of Testamentary Succession (where Will is made).

Testamentary Succession – in case of NRI

Effect of No Nomination / No Joint Holder

- ✓ All institutions are obliged to honour the Probate issued by the Court.
- ✓ Probate is a conclusive document for property bequeathed in favour of beneficiary
- ✓ In the absence of a Probate, the institution may prescribe procedure to accept a will without a Probate as document for transmission of asset.

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What is Intestate Succession ? & How does it operate in case of NRI ?

Intestate Succession – in case of NRI

- ✓ When a person dies without executing a Will, the process by which the assets of the deceased are bequeathed is called Intestate Succession.
- ✓ There are specific provision applicable according to the religion followed by the deceased.

Hindu Succession Act	Muslim Shariat Law	The Indian Succession Act
Hindu, Sikhs, Jain, Buddh	Muslim	Christian, Parsi

Intestate Succession – in case of NRI

Distribution of assets where Hindu dies without executing a Will

✓ **Hindu Male : Class I heirs**

Mother, Widow, Daughters, Sons, Heirs of the predeceased Son / Daughter. (Father not included).

✓ **Hindu Female : Class I heirs**

Sons, Daughters, Children of predeceased Son / Daughter and the Husband. (Father, Mother, Father-in-law, Mother-in-law not included).

All the assets are to be evenly distributed amongst all the heirs.

Intestate Succession – in case of NRI

Final step in – Intestate Succession

- ✓ Heriship Certificate / Succession Certificate is an order of the Court certifying the legal heirs of the deceased and the assets bequeathed to the legal heirs.
- ✓ The legal heirs under the law of Succession should obtain a certificate of Heirship (Varsai Ambo / Pedhi Namu / Family Tree) from Mamlatdar office.
- ✓ The legal heirs should then apply to the court to obtain a Heirship Certificate / Succession Certificate.
- ✓ The Court will issue public notice and consider any responses received thereafter issue a Heirship Certificate / Succession Certificate.

Intestate Succession – in case of NRI

Effect of Nomination / Joint Holder (E or S)

- ✓ On death of the holder of such assets transmission of assets needs to be done in favour of the Nominee / Joint holder (E or S).
- ✓ Nominee / Joint Holder (E or S) is not the owner of the assets, he is merely a Custodian / Trustee. The real owner of the asset are the legal heirs of the deceased under Intestate Succession (where Will is not made).

Intestate Succession – in case of NRI

Effect of No Nomination / No Joint Holder

- ✓ All institutions are obliged to honour the Heriship Certificate / Succession Certificate.
- ✓ Heriship Certificate / Succession Certificate is a conclusive document for property bequeathed the same.
- ✓ In the absence of a Heriship Certificate / Succession Certificate, the institution may prescribe procedure to accept the certificate of Heirship (Varsai Ambo / Pedhi Namu / Family Tree) as document for transmission of asset.

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Management of Assets (Moveable & Immovable) by Power of Attorney

Management of Assets by Power of Attorney

For Movable Assets

✓ Should be notarised in India or Abroad.

✓ Should be stamped as per local Stamp Act, in Gujarat, it is Rs. 300/=.

Management of Assets by Power of Attorney

Important clauses of POA to manage Movable Assets

- ✓ To carry out all the operations of Depository Account including instruction for debit & credit to the demat account.
- ✓ To carry out operation of Government supported savings schemes with specific mention of names.
- ✓ To carry out the affairs of a Hindu Undivided Family (HUF) where the NRI is the Karta of his HUF.

Management of Assets by Power of Attorney

Important clauses of POA to manage Movable Assets

- ✓ To carry out the affairs of Partnership or Proprietorship Concern.
- ✓ To carry out functions as a Director of a Company.
- ✓ To make and accept all claims under a WILL or under succession.
- ✓ To encash fixed deposits even before maturity and close bank accounts (subject to acceptance by the bank).

Management of Assets by Power of Attorney

For Immovable Assets

✓ If giver and receiver of POA holder both are in India
Should be registered with respective Registrar where the property is located in India.

✓ If giver and / or receiver of POA are out of India
POA should be executed & signed before Indian Embassy abroad and thereafter should be submitted in 90 days to registrar where the property is located. It will be stamped & verified by Stamp Duty Collector Office & District Collector Office. Giver & Receiver of POA both can execute and sign out of India.

Management of Assets by Power of Attorney

For Immovable Assets

- ✓ Appropriate stamp duty has to be paid, which is Rs. 100/= for POA to close relatives (father, mother, brother, sister, wife, husband, son, daughter, grandson, granddaughter).
- ✓ When POA given to any person other than close relative, market value based stamp duty will be liable on the POA.
- ✓ It is advisable to give a Letter of Authority to a lawyer, to represent the parties before authorities in India, when the giver & receiver of POA is out of India.

A world map in a light blue color is centered on a dark blue background with a fine grid pattern. The map shows the outlines of the continents.

FEMA & RBI Regulations on Transmission of Assets

FEMA & RBI Regulations on Transmission of Assets

✓ Immovable Assets

Name of Asset	Regulations on transmission
<ul style="list-style-type: none">■ <u>Immovable</u> other than Agriculture Land, Plantation and Farm House■ <u>Agriculture</u> Land, Plantation and Farm House	<ul style="list-style-type: none">■ From <u>NRI / OCI</u> who has lawfully acquired it■ From a person <u>Resident</u> in India■ Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong, Macau or North Korea (DPRK), is <u>not allowed</u> to acquire immovable property in India without prior approval from the Reserve Bank of India

FEMA & RBI Regulations on Transmission of Assets

✓ Movable Assets

Name of Asset	Regulations on transmission
Share in Partnership Firm / LLP	<u>Prior approval</u> of Reserve Bank of India is <u>only required</u> , if any <u>regulation</u> gets <u>breached</u> .
Shares – Listed or Unlisted companies	Example : NRI Cap, Sector Cap, Restricted Sectors

✓ Assets like Bank Accounts, Fixed Deposits, Mutual Funds, transmission happens on the basis of the source of investment – Repatriable or Non Repatriable.

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Taxability of assets received on inheritance in India

India does not have inheritance tax. Estate duty in India has been abolished.



Section 56 (x) :- Following are liable to Income Tax

- ✓ Any sum received without a consideration exceeding Rs. 50,000/=.
- ✓ Any movable or immovable property received without a consideration or with inadequate consideration.

Exceptions

Provided that this clause shall not apply to any sum of money or any property received

- ✓ from any relative (as defined).
- ✓ on the occasion of the marriage of an individual.
- ✓ under a will or by way of inheritance.

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Taxability of income from assets received under inheritance in India

Taxability of assets received on inheritance in India

✓ Immovable Assets

Name of Asset	Different Types of Income	Taxability
Immovable other than Agriculture Land, Plantation and Farm House	Rent Income	Taxable as per normal tax rate, after deduction of 30% u/s 24.
Agriculture Land, Plantation and Farm House	Agriculture Income	Exempted u/s 10(1)

Taxability of assets received on inheritance in India

✓ Movable Assets

Income Generating

Name of Asset	Type of Income	Taxability
NRO Account / NRO Fixed Deposit	Interest income	Taxable as per normal tax rate
NRE Account / NRE Fixed Deposit	Interest income	Exempted as per Section 10(4)
FCNR Account		
PPF Investment	Interest income	Exempted as per Section 10 (11)

Taxability of assets received on inheritance in India

✓ Movable Assets

Growth oriented

Name of Asset	Type of Income	Taxability
Shares	Dividend	Exempted U/S 10(34), however company are required to pay DDT
Mutual Funds		Exempt U/S 10(35), however companies are required to pay DDT

Taxability of assets received on inheritance in India

✓ Movable Assets

Growth oriented

Name of Asset	Different Types of Income	Taxability
Share in Partnership Firm / LLP	Remuneration	Taxable as per normal tax rate
	Interest on capital	
	Share in Profit of business	Exempted u/s 10(2A)

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Taxability on sale of assets received under inheritance

Taxability of sale of assets received under inheritance

✓ Immovable Assets

Name of Asset	Long Term Capital Gain	Short Term Capital Gain
Immovable other than Agriculture Land, Plantation and Farm House.	<u>More than 2 years</u> Tax Rate - 20% + surcharge + Health & Edu. Cess)	<u>Less than 2 years</u> Normal Tax Rate + surcharge + Health & Edu. Cess
Agriculture Land, Plantation and Farm House within the limits prescribed.	TDS Rate 20.8%	TDS Rate 31.8%
	TDS is to be deducted on entire sale consideration	

Taxability of sale of assets received under inheritance

✓ Immovable Assets

Agricultural land situated beyond the below limits are completely exempted.

<u>Population of a city / town etc.</u>	<u>Arial Distance</u>
10,000 to 1,00,000	2 kms.
1,00,000 to 10,00,000	6 kms.
Above 10,00,000	8 kms.

Agricultural land within these limits are liable to taxation as any other immovable assets.

Taxability of sale of assets received under inheritance

✓ Movable Assets

Income	Taxation In India
Sale of Shares – Listed	Short term (less than 1 year) – 15% Long term (more than 1 year) – Exempted upto Rs.1,00,000/-. Above that – 10%
Sale of Shares – Unlisted	Short Term (less than 2 years) – normal tax rate Long term (more than 2 years) – 10% (without indexation & FCF)

Taxability of sale of assets received under inheritance

✓ Movable Assets

Income	Taxation In India
Mutual Fund Investment – Debt	Short Term (less than 3 years) – Normal tax rate Long Term (more than 3 years) – (Listed) - 20%(with indexation) Long Term (more than 3 years) (Unlisted) – 10% (without indexation & FCF)
Mutual Fund Investment – Equity	Short term (less than 1 year) – 15% Long term (above 1 year) Exempted upto 1,00,000/- . Above that – 10%

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Repatriation of sale proceeds of assets received under inheritance

✓ Immovable Assets

Name of Asset	Regulation for repatriation
Sale proceeds from <u>immovable</u> other than Agriculture Land, Plantation and Farm House.	<ul style="list-style-type: none">■ If purchased <u>from Foreign Exchange</u> remittance / FCNR / NRE A/c, entire sale proceeds can be <u>repatriated</u>. In case of <u>residential</u> properties, maximum <u>two properties</u>.■ If assets <u>acquired by any other mode</u>, repatriation possible under US\$ 1 million limit per financial year.
Sale proceeds from <u>Agriculture</u> Land, Plantation and Farm House	Repatriation possible under <u>US\$ 1 million</u> limit per financial year.

Repatriation of sale proceeds of assets received under inheritance

✓ Movable Assets

Name of Asset	Regulation for repatriation
Sale of shares – if purchased from NRE PIS	Full amount
Sale of shares – if purchased from NRO PIS	Repatriation possible under US\$ 1 million limit per financial year
Sale of Mutual Funds – if purchased from NRE A/c	Full amount
Sale of Mutual Funds – if purchased from NRO A/c	Repatriation possible under US\$ 1 million limit per financial year
Share in Partnership Firm / LLP	Repatriation possible under US\$ 1 million limit per financial year

Disclaimer

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

This Presentation may contain references, website links, regulations or other policy materials. This Information provided, is only intended to be a general summary. All information in this presentation, including charts, examples and other website references, may be used for any purpose only after Professional advice.

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Forthcoming presentations for NRIs

Subject	Date	Venue
Various kinds of incomes in India by NRI and its Income Tax implications in India. Overview of FATCA, FBAR and CRS	19 January, 2019 (Saturday)	Hotel Imperial Palace, Rajkot
	26 January, 2019 (Saturday)	Ahmedabad Management Association, Ahmedabad

Please register for the events.



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