

NRI FEMA & REGULATIONS



PRESENTATION INDEX

Sr. No.	Topic	Slide No.
1.	Various definitions of a Non-Resident Indian (NRI)	5-47
2.	Management of Assets (Movable & Immovable) by Power of Attorney for NRI	48-58
3.	Transfer of funds from NRO A/c to NRE A/c and repatriation of funds out of India	59-64
4.	Inbound Investments by NRI	65-84
5.	Loans by NRI/OCI to Resident Indians	85-95
6.	Loans by to Resident Indians to NRI/OCI	96-97
7.	Gifts by NRI/OCI to Residents in India	98-107

PRESENTATION INDEX

Sr. No.	Topic	Slide No.
8.	Gift implications by NRI/OCI to another NRI/OCI in India	108-110
9.	Gift implications by Residents to NRI/OCI	111-112
10.	Cash carrying limits in foreign currency	113-114
11.	PPF & NRI	115-117
12.	AADHAAR & NRI	118-120
13.	FEMA & RBI Regulations on Transmission of Assets	121-123

PRESENTATION INDEX

Sr. No.	Topic	Slide No.
14.	Penalty for contraventions by NRI under FEMA	124-127
15.	Regulations on transfer of Immovable Assets by NRI	128-132
16.	Disclaimer	133

Various definitions of a Non-Resident Indian (NRI)



Various definitions of a Non-Resident Indian (NRI)

Different Provisions for Residential status...

- 1. As per Income Tax : Based on the number of days of stay.**
- 2. As per FEMA : Based on the number of days of residing and the conduct & intention of the person.**
- 3. Eligibility for Overseas Citizen of India. (OCI) : Based on conclusive tests for claiming OCI eligibility.**
- 4. As per Citizenship : Based on Citizenship Act.**

Who is a NRI under the Citizenship Act?



Who is a NRI as per the Citizenship Act ?

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 want to acquire Citizenship.**

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

Who is a NRI for Banking & Investment purposes?



Who is a NRI for Banking & Investment purposes ?

A) As per FEMA (Foreign Exchange Management Act), a person RESIDENT IN INDIA is:

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

i) 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 for Banking & Investment purposes ?

- ii) 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

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

Who is a NRI for Banking & Investment purposes ?

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 for Banking & Investment purposes ?

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 citizen of India who is of foreign origin or spouse of OCI Card holder who is of foreign origin. 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 Banking & Investment purposes ?

NRI for banking & investment purposes :

a. Non Residents (NR) as per FEMA Regulation
+

Having Indian passport (citizenship)

OR

b. Non Residents (NR) as per FEMA Regulation
+

Having foreign passport (citizenship) &
eligible for OCI card

(For investment purposes, OCI card is compulsory)

Who is a NRI for Banking & Investment purposes ?

Principles established by the definition of FEMA

1.

- A. A person residing in India for more than 182 days during the course of preceding financial year is a resident.
- B. A person merely staying in India (not residing in India) is not a resident.

*(N.K.R. Arunachalam Chettiar v/s Director of Enforcement
APPEAL NO. 476 OF 1991*

Decided on, 28 January 2000

at, Appellate Tribunal For Foreign Exchange New Delhi)

Who is a NRI for Banking & Investment purposes ?

Principles established by the definition of FEMA

2. The exception to the principle laid down in point 1. above –

- A. A person has gone out of India or who stays outside India or
- B. A person has come to or who stays in India –

The term used is stay and not resides. Hence, just staying outside India/in India for the specified reasons will make him a Non-Resident/Resident.

3. These terms need to be established on the basis of facts of each case.

Who is a NRI for Banking & Investment purposes ?

Principles established by the definition of FEMA

4. A person residing in India for 182 days or more in the preceding financial year OR coming to India to take up employment OR carry out business OR to stay in India for an uncertain period of time is a Resident.

Hence, he/she cannot hold a NRE/NRO/FCNR A/c in India.

5. A person not residing in India for 182 days or more in the preceding financial year or coming to India to take up employment or carry out business or to stay in India for an uncertain period of time is a Resident.

Hence, he/she cannot hold a Resident Indian bank account and can hold NRE/NRO/FCNR A/c in India.

Eligibility for various categories of persons



Eligibility for various categories of persons

Activity	Business & Portfolio Investment	Bank Accounts	Immovable Property
Eligible Persons	<ul style="list-style-type: none"> Any Indian Citizen OCI Cardholder 	<ul style="list-style-type: none"> Any Indian Citizen OCI Cardholder PIOs (Eligible to become OCI) 	<ul style="list-style-type: none"> Any Indian Citizen OCI Cardholder
Foreign Citizens requiring prior approval (After satisfying above conditions)	<p>All citizens of:</p> <ul style="list-style-type: none"> Bangladesh Pakistan <p>(Govt. approval required)</p>	<p>All citizens of:</p> <ul style="list-style-type: none"> Bangladesh Pakistan <p>(RBI approval required)</p>	<p>All citizens (other than OCI cardholders) of:</p> <ul style="list-style-type: none"> Bangladesh Nepal Bhutan Hong Kong Afghanistan Iran Pakistan China Sri Lanka Korea (DPRK) <p>& Macau</p> <p>(RBI approval required)</p>

Not Permanently Resident (NPR)



Not Permanently Resident (NPR)

RBI/FED/2015-16/8

FED Master Direction No. 13/2015-16

- ✓ NPR means a person resident in India: An expatriate (foreign employee in India) for a specific job or assignment, the duration of which does not exceed three years.
- ✓ Indian employers can remit PF etc. abroad to those who are expatriate staff, i.e. whose PF, etc., is maintained outside India by the principal employer
- ✓ NPR Foreign citizen can remit net salary abroad. Net salary means net of Tax, PF, etc.
- ✓ Life insurance policy can be issued in foreign currency or rupees
Premiums to be paid from abroad or from repatriable incomes

Banking Regulations for NRI

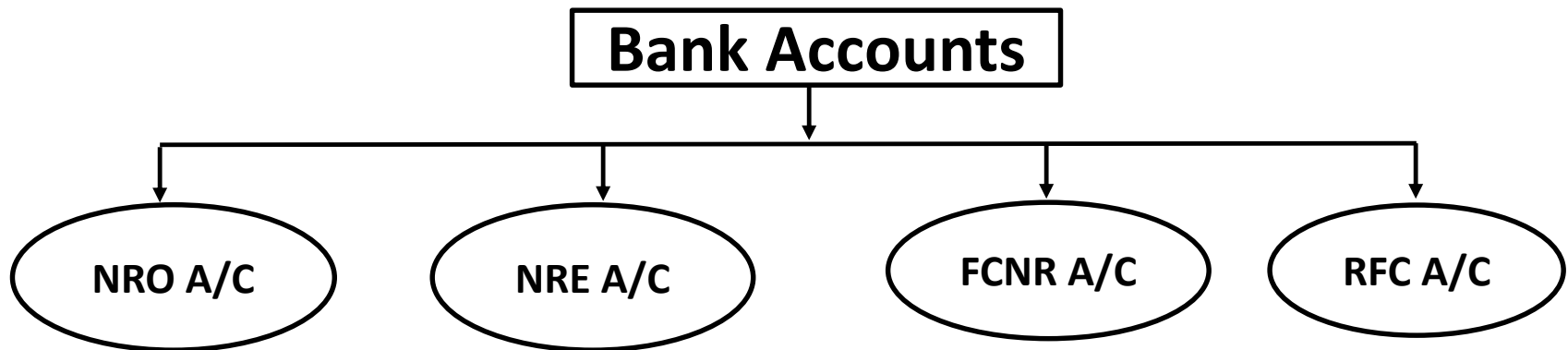


Banking Regulations for NRI

INTRODUCTION

- ✓ NRI are not allowed to keep Resident Indian savings account in India under FEMA.
- ✓ Either the resident 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 Resident Ordinary 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 / OCI or with resident can be opened.
- ✓ Loan available against this account in Indian Rupees.

Banking Regulations for NRI

Bank Accounts by NRI

NRE Account (Non Resident External 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/OCI or with resident relative* can be opened.

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

Banking Regulations for NRI

Definition of relative as per section 2(77) Companies Act for all FEMA & RBI regulations

- ✓ Husband & Wife.
- ✓ Father & Mother (Including Step-Father & Step-Mother).
- ✓ Brother & Sister (Including Step-Brother & Step-Sister).
- ✓ Son (Including Step-Son), Daughter & their Spouses.
- ✓ Members of HUF.

Banking Regulations for NRI

Bank Accounts by NRI

FCNR Account (Foreign Currency Non-Resident Account)

- ✓ Deposits in specified foreign currencies (Savings bank account not available).
- ✓ 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 / OCI 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 (Resident Foreign Currency Account)

- ✓ This account can be maintained in form of savings bank account as well as term deposits by returning NRIs.
- ✓ There is no maximum time limit for holding RFC savings bank account and term deposits.
- ✓ This account can be opened and maintained in any convertible foreign currency.
- ✓ Loan not available against this account.
- ✓ Credits of foreign exchange assets, NRE & FCNR balances.

Banking Regulations for NRI

Bank Accounts by NRI

RFC Savings Bank Account (Resident Foreign Currency Account) can be

Converted into
NRE Savings
Bank A/c if the
returning NRI
again becomes
a NRI under
FEMA in future.

Transferred to Resident
Savings Bank A/c for
making
payments/withdrawals.

Remitted outside
India directly
anytime up to any
limit.

Banking Regulations for NRI

Permission for various categories of persons

Account type	Domestic / Resident Account	Non Resident Ordinary (NRO) Account	Non Resident External (NRE) Account	Foreign Currency Non Resident (FCNR) 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

Banking Regulations for NRI

- Comparative Analysis (1/3)

Particulars	NRE	NRO	FCNR
Currency	Indian Rupees	Indian Rupees	Any permitted currency i.e. foreign currency freely convertible
Account Type	Savings, Current or Fixed Deposit	Savings, Current or Fixed Deposit	Fixed/Term Deposit
Who can open?	NRI and OCI	NRI or Resident before becoming a NRI	NRI and OCI
Joint account with NRI	Yes		
Joint account with resident	Only with a resident relative on 'former or survivor' basis	With any resident on 'former or survivor' basis	Only with a resident relative on 'former or survivor' basis
Can power of attorney holder open the account?	No		
Can power of attorney holder operate the account?	Yes, can make local rupee payments		

Banking Regulations for NRI

- Comparative Analysis (2/3)

Particulars	NRO	NRE	FCNR
Permissible credits	<ul style="list-style-type: none"> - Inward remittance to India - Legitimate dues in India of account holder - Any amount received under such Regulations. 	<ul style="list-style-type: none"> - Inward remittance to India - Interest on funds in account - Current income in India (subject to taxes) - Maturity proceeds of investments if investment made from this account - Any other credit permitted by RBI 	Same as NRE
Eligible debits	<ul style="list-style-type: none"> - All local payments including for investment - Remittances outside India of current income in India (net of taxes) - Settlement of charges on International credit cards. 	<ul style="list-style-type: none"> - Local disbursements - Remittances outside India - Investment in shares/securities/commercial paper of Indian company or for purchase of immovable property in India permitted by RBI - Any other transactions permitted by RBI 	Same as NRE
Income Tax	Taxable	Tax free	Tax free

Banking Regulations for NRI

- Comparative Analysis (3/3)

Particulars	NRO	NRE	FCNR
Fund transfer to another account	Funds can be transferred from an NRO account to an NRO / Resident account	Funds can be transferred from an NRE account to an NRO / NRE / Resident account	Funds can be transferred from existing NRE/FCNR account
Repatriation	Repatriable subject to payment of tax and completion of formalities. Balance repatriable upto USD 1 mn per financial year	Balance fully repatriable	Balance fully repatriable
Change in residential status to resident	Shall be designated as resident accounts	Should be designated as resident accounts or the funds may be transferred to RFC accounts	FCNR deposits may be allowed to continue till maturity.
Best Suited For	To park Indian earnings like rent, Indian salary, dividend, etc	To park overseas savings remitted to India by converting to INR	To maintain account in Foreign Currency

Banking Regulations for NRI

Bank Accounts by NRI

SNRR Account (Special Non Resident Rupee Account)

- ✓ This account can be maintained by any person who is a Non-Resident under FEMA (other than Pakistan and Bangladesh nationals) having business interest in India.
- ✓ This account is a rupee denominated non interest bearing account which is repatriable, but transfers from NRO account are prohibited.
- ✓ There shall not be any fixed term for holding this account if it is opened in accordance with the RBI guidelines.
- ✓ The SNRR account shall be used only for the specific business for which it is in operation.
- ✓ The amounts shall be credited to the NRO/NRE account of the nominee of the death of account holder.

Provisions & Formalities for returning NRI



Provisions & Formalities for returning NRI

General rules

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

Provisions & Formalities for returning NRI

Foreign Assets :

- ✓ NRI returning to India for permanent settlement may continue to hold or own all types of Foreign Assets
- Foreign Currency
- Foreign Securities
- Bank Deposits
- Immovable properties if the same were held/owned by them when he was residing abroad, the above assets can be held 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

Provisions & Formalities for returning NRI

Foreign Assets :

- ✓ Returning NRI are also allowed to purchase and sale the above mentioned foreign assets.
- ✓ Under the relevant regulation, the payment and receipt for such purchase & sale 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. However, maximum period for holding RFC deposits with certain banks is 3 years.
- ✓ A 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).

Provisions & Formalities for returning NRI

Procedure by NRI on Return to India under FEMA:

<u>Authorities</u>	<u>Action</u>
Insurance companies, Mutual Funds, shares held in companies	Inform regarding the status of change from Non resident to Resident.
Bank Accounts	Inform regarding the status of change from Non resident to Resident and convert the various bank accounts.

<u>Old Bank Account</u>	<u>New Bank Account</u>
NRO Account	Resident Saving Account
NRE Account	Resident Savings account or Resident Foreign Currency Account (RFC) Account

<u>Old Bank Deposits</u>	<u>New Bank Deposits</u>
NRO/NRE/FCNR Term deposits	Can be continued till maturity at the contracted rate of interest or can be converted into RFC term deposits.

Provisions & Formalities for returning NRI

NRE & NRO Savings Bank Account



Banking operations:

Returning NRI have the following two options from the day the person becomes a resident under FEMA:

1. Convert their NRE & NRO savings bank account into resident Indian savings bank account.
2. Convert NRE savings bank accounts can be converted into RFC savings bank account/RFC term deposit held in foreign currency.

Provisions & Formalities for returning NRI

NRE & NRO Savings Bank Account

Taxation:

- ✓ The interest on converted NRO/NRE savings bank account converted into resident Indian savings bank account becomes taxable from the day the person becomes a resident under FEMA.
- ✓ Interest on RFC savings bank account and term deposits are exempt from Income Tax for Non-residents (NR) and Resident but not Ordinarily Resident Individuals (RBNOR).
- ✓ The interest incomes on RFC savings bank accounts & term deposits after attaining Resident & Ordinarily Resident residential status (R & OR) can be taxed at a flat rate of 20% u/s 115H.

Provisions & Formalities for returning NRI

NRE & NRO Term Deposits

✓ Banking operations:

Returning NRI have the following two options from the day the person becomes a resident under FEMA:

1. Continue the NRE & NRO term deposits at the same terms.
2. Convert NRE term deposits into RFC savings bank account/ RFC term deposits held in foreign currency.

Provisions & Formalities for returning NRI

NRE & NRO Term Deposits

Taxation:

- ✓ The interest on NRE term deposits continued till maturity become taxable from the date of return to India, irrespective of the residential status under Income Tax.
- ✓ The returning NRI has an option to be taxed on the interest incomes on NRE or NRO term deposits (invested from convertible foreign exchange) continued or converted (not redeemed and reinvested) into resident term deposits till maturity at a concessional flat rate of 20% u/s 115H.
- ✓ Interest on RFC savings bank account/ RFC term deposits are exempt from Income Tax for Non-residents (NR) and Resident but not Ordinarily Resident Individuals (RBNOR).
- ✓ Interest incomes on RFC savings bank account/ RFC term deposits after attaining Resident & Ordinarily Resident (R & OR) residential status can be taxed at a flat rate of 20% u/s 115H.

Provisions & Formalities for returning NRI

FCNR term deposits

Banking operations:

- ✓ Returning NRI have the following two options from the day the person becomes a resident under FEMA:
 1. Continue the FCNR term deposits at the same terms.
 2. Convert FCNR term deposits into RFC savings bank account/RFC term deposits held in foreign currency.

Provisions & Formalities for returning NRI

FCNR term deposits

Taxation:

- ✓ Interest on FCNR term deposits continued are exempt from Income Tax for Non-residents (NR) and Resident but not Ordinarily Resident Individuals (RBNOR).
- ✓ The returning NRI has an option to be taxed on the interest incomes on FCNR term deposits after attaining Resident & Ordinarily Resident (R & OR) residential status at a flat rate of 20% u/s 115H.
- ✓ Interest on RFC savings bank account /RFC term deposits are exempt from Income Tax for Non-residents (NR) and Resident but not Ordinarily Resident Individuals (RBNOR).
- ✓ The interest incomes on RFC savings bank accounts/RFC term deposits after attaining Resident & Ordinarily Resident residential status (R & OR) can be taxed at a flat rate of 20% u/s 115H.

Regulations for NRI of specified countries



Regulations for NRI of specified countries

Restrictions on transactions with citizen of certain countries

Name of function	Pakistan	Bangladesh	Sri Lanka	Nepal
Does he / she become a NRI even when he / she is a <u>Person of Indian Origin</u>	No	No	Yes	Yes
Opening <u>Bank Account</u> in India	Individuals/ Entities with prior approval of RBI	Should hold a valid visa and valid residential permit	No restrictions	No restrictions
Acquiring / transfer <u>immovable property</u> in India	Not without the prior permission of the RBI Lease not exceeding five years for leased property	Not without the prior permission of the RBI Lease not exceeding five years for leased property	Not without the prior permission of the RBI Lease not exceeding five years for leased property	Not without the prior permission of the RBI Lease not exceeding five years for leased property
Investment in <u>Shares</u>	Prior approval of FIPB	Prior approval of FIPB	General permission	General permission
Investment in <u>Mutual Fund</u>	Prior approval of FIPB	Prior approval of FIPB	General permission by RBI	General permission by RBI

Management of Assets (Movable & Immovable) by Power of Attorney for NRI



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).
- ✓ POA can be for a limited period. The period should be clearly stated in the POA document.

Management of Assets by Power of Attorney

For Immovable Assets

નોંધણી સર નિરીક્ષકની કચેરી, ગુજરાત રાજ્ય, ગાંધીનગર, ક્રમાંક,
ઈજર/વહટ/૨૦૨/૨૦૧૬/૨૦૨૦/૨૧૨૫૪-૬૫૧, તા. ૨૩/૦૭/૨૦૨૦

(The procedure for transfer of Immovable Assets with a POA in the state of Gujarat is notified by the the above circular. Following is the analysis of the same.

- ✓ All POA for management or transfer of immovable assets have to be stamped and registered.
- ✓ It can be for a limited or unlimited period. If the period is limited, it has to be clearly stated in the POA.
- ✓ POA giver and/or receiver can be in or outside India. Different compliances to be followed have been stated in the following slides.

Management of Assets by Power of Attorney

For Immovable Assets

Where POA giver & receiver are both in India

- ✓ The POA should be registered with the jurisdictional sub-registrar office where the property is located.
- ✓ The POA can also be registered with any sub-registrar office in Gujarat/anywhere in India if the POA giver is suffering from illness, employment at distant location, working with armed forces, serving prison sentence, etc.

Management of Assets by Power of Attorney

For Immovable Assets

Where POA giver & receiver are both in India

- ✓ A sub-registrar which does not have jurisdiction over the immovable asset shall not register such POA unless the document of POA contains the objects/reasons why the POA is registered with sub-registrar other than the jurisdictional sub-registrar.
- ✓ Where POA has been registered at any registrar office other than the sub-registrar where the property is located, the sub-registrar registering the transfer of property on the basis of the POA shall verify the correctness of the POA.
- ✓ Differential stamp duty needs to be paid if the POA is executed outside Gujarat and the stamp duty in Gujarat is more.

Management of Assets by Power of Attorney

For Immovable Assets

Where the owner of immovable asset is out of India and intends to transfer the asset in India

- ✓ The owner of the immovable asset himself/herself signs the sale document AND a POA to present the sale document and confirm the signature of the seller who has signed the sale document outside India.
- ✓ The sale document and POA should be signed before the Notary Public or Judge or Magistrate or Indian Consul or Vice Consul.
- ✓ Stamp duty needs to be paid if the POA is executed outside India without payment of stamp duty.

Management of Assets by Power of Attorney

For Immovable Assets

Where the POA giver is outside India and receiver is in or outside India

- ✓ POA should contain reasons why the same is signed outside India. It should be signed before the Notary Public, Judge, Magistrate, Indian Consulate or Vice Consulate.
- ✓ The POA should be produced before the stamp duty authorities within the stipulated time limit (90 days after receipt in India), for affixing appropriate stamp duty on it. The date on envelop shall be considered as the date of receipt in India.
- ✓ The POA should be produced within the stipulated time limit before the jurisdictional sub-registrar for registration. The jurisdictional Registrar shall seek confirmation about the signature of the POA giver and register the POA.
- ✓ It is advisable to give a Letter of Authority to a lawyer, to represent the parties before authorities in India where the POA giver and receiver have signed the POA outside India. If the POA receiver is in India he/she needs to be present before the jurisdictional Sub Registrar for registration.

Management of Assets by Power of Attorney

For Immovable Assets

Where the POA is executed outside Gujarat in respect of immovable property located in Gujarat

- ✓ The same process as stated above has to be followed as in the case where the POA giver is outside India. However, the difference of stamp duty between the amount payable in Gujarat and amount paid outside Gujarat, has to be paid.

Stamp Duty on POA

- ✓ Appropriate stamp duty has to be paid, which is Rs. 300/- for POA in Gujarat 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.

April 10, 2013/CAITRA 20, 1935 – Gujarat Stamp (Amendment) Act, 2013

Power of Attorney for NRI

Notification No. FEMA 5(R)/2016-RB

Foreign Exchange Management (Deposit) Regulations, 2016

A POA in a NRE A/c or NRO A/c -

CAN

- ✓ Make payments & investments in Indian Rupees.
- ✓ Remit funds outside India only in the foreign account of the account holder.

CANNOT

- ✓ Make payment by way of gift to a resident on behalf of the non-resident.
- ✓ Transfer funds to any other NRO A/c from NRO A/c and NRE A/c to any other NRE A/c.

Transfer of funds from NRO A/c to NRE A/c and repatriation of funds out of India



Transfer and repatriation of funds

RBI/2015-16/ 384

A.P. (DIR Series) Circular No. 64/2015-16 [(1)/13(R)]4

Foreign Exchange Management (Remittance of Assets) Regulations, 2016

NRI can avail the benefit of transferring funds (other than borrowed funds) from NRO A/c to the extent of US\$ 1 million (since 2005) 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 has to be followed for the transfer. The funds shall not be from any borrowed sources or from transfers from any other NRO accounts.**
- ✓ **Where the remittance is made in more than one instalment, the remittance of all instalments shall be made through the same authorised dealer (bank).**

Transfer and repatriation of funds

- ✓ A person who desires to make a remittance of assets exceeding USD 1,000,000 (US Dollar One million only) per financial year in the following cases, may apply to the Reserve Bank if the remittance is:
 1. On account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and
 2. By a Non-Resident Indian (NRI) or Person of Indian Origin (PIO), out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.
- ✓ The Remitter shall have to prove that hardship will be caused to such a person if remittance from India is not made.

Transfer and repatriation of funds

Advantages of Fund Transfer from NRO A/c to NRE A/c or outside India:

- ✓ NRE Account Interest is Tax Free.
- ✓ TDS would not be applicable on the interest income from NRE Account.
- ✓ The balances in the NRE Account are fully repatriable to the country of residence without any limits and formalities.
- ✓ Repatriation can be done at the ease of Account holder to avail the benefit of comfortable exchange rate.

Transfer and repatriation of funds

- ✓ 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.

As per Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (clause 29), in case of residential property acquired from NRE/FCNR A/c balance or remittance, direct repatriation of sale proceeds (Subject to CA certification for payment of appropriate taxes) for NRI is restricted to maximum two such properties.

Transfer and repatriation of funds

Repatriation of Current Incomes

- ✓ As per section 5 of FEMA, any person can enter into Current Account transactions (as defined under section 2(j)) without seeking any prior approvals, unless restricted by RBI.
- ✓ Therefore, there is no limit (Of \$1 million or any limit) up to which Current incomes (rent, interest, business & profession income, etc.) can be transferred directly outside India or from NRO to NRE bank account by a NRI.
- ✓ Appropriate taxes must have been paid or deducted from such incomes to execute the transfer.

Inbound Investments by NRI



Investment in Proprietorship/Partnership Firm

Investment in Proprietorship/Partnership Firm

Foreign Exchange Management (Non-debt Instruments) Rules, 2019

SCHEDULE IV

- ✓ Investment in Proprietorship/Partnership can be by NRI or OCI. Proprietorship refers to any business activity in individual capacity.
- ✓ Capital contribution without any limit.
- ✓ Business of Proprietorship/Partnership should not be into prohibited sectors such as agricultural/plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights. Real estate development activity is permitted.
- ✓ The NRI cannot engage in any of the prohibited sector business activity stated above even after seeking RBI approval.
- ✓ Investment through NRE / NRO / FCNR / Direct Remittance.
- ✓ Amount invested and the capital appreciation thereon to be credited in NRO A/c.

Investment in Proprietorship/Partnership Firm

Bank Accounts by NRI for Proprietorship Business

SNRR Account (Special Non Resident Rupee Account)

- ✓ This account can be maintained by any person who is a Non-Resident under FEMA (other than Pakistan and Bangladesh nationals) having business interest in India.
- ✓ This account is a rupee denominated non interest bearing account which is repatriable, but transfers from NRO account are prohibited.
- ✓ There shall not be any term for holding this account if it is opened in accordance with the RBI guidelines.
- ✓ The SNRR account shall be used only for the specific business for which it is in operation.
- ✓ The amounts shall be credited to the NRO/NRE account of the nominee of the death of account holder.

Investment in LLP

Investment in LLP by NRI

- ✓ ***As per section 3 of LLP Act,***
 - (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.***
 - (2) A limited liability partnership shall have perpetual succession.***
- ✓ ***As per section 5 of LLP Act,***
Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to a limited liability partnership.
- ✓ **Therefore, since LLP is a body corporate, it can become a partner in any partnership firm and also a shareholder in any company.**

Investment in LLP by NRI

NRI as Designated Partner of an Indian LLP

- ✓ As per Section 7 of the LLP Act, 2008 every LLP shall have at least one designated partner who has stayed in India for a total period of not less than 182 days in the previous calendar year.
- ✓ Therefore, one or more NRI can become a partner/s in any Indian LLP provided there is at least one designated partner.
- ✓ There are no restrictions on acceptance of deposits by the LLP from its partners.

Investment in LLP by NRI – on Non Repatriable basis

Foreign Exchange Management (Non-debt Instruments) Rules, 2019 SCHEDULE IV

- ✓ Investment in LLP can be by NRI or OCI.
- ✓ Capital contribution without any limit.
- ✓ Business of LLP should not be into prohibited sectors such as agricultural/plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights. Real estate development activity is permitted.
- ✓ Investment through NRO / NRE / Remittance.
- ✓ Disinvestments receipts from LLP to be credited in NRO bank account.

Investment in LLP by NRI – on Repatriable basis

Foreign Exchange Management (Non-debt Instruments) Rules, 2019 SCHEDULE VI

- ✓ Investment in LLP can be done by any NRI or OCI at a value not less than the FMV of the share in the firm.
- ✓ LLP should be in business activities, where FDI up to 100 percent is permitted under automatic route. In sectors/activities not listed in the FDI policy, FDI is permitted up to 100% under the automatic route, subject to applicable laws/regulations.
- ✓ No restriction on Capital Contribution, subject to conditions of LLP Act.
- ✓ Investments through Remittance/NRE/FCNR bank account.
- ✓ Disinvestments receipts from LLP can be remitted out of India or can be credited in NRE / FCNR bank account.

Investment in LLP by NRI

Taxation of Limited Liability Partnerships

- ✓ The incomes can be distributed in form of interest on capital (max. 12% p.a.) and remuneration to some or all the partners. Such distributions will become the incomes of the respective partners taxable at normal slab rates of income.
- ✓ The balance income of the firm will be taxable at a rate of 31.2% (including cess) and surcharge at 12% if the income crosses Rs.1 crore.
- ✓ The income distributed after such payment of tax will be tax free in the hands of partners as per their respective profit sharing ratio.

Investment in LLP by NRI – on Repatriable basis

Notification No. FEMA. 395/2019-RB

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

Reporting for foreign investment in India

No.	Form	Time Limit
1.	Annual Return of assets & liabilities (FLA)	15th day of July of each year
2.	Valuation Report shall be taken from CA/Merchant Banker	During application for incorporation
3.	Single Master Form	Within 30 days from the date of receipt of the amount of consideration

Investment in Unlisted Companies by NRI

Investment in Unlisted Companies by NRI- Non Repatriation basis

Foreign Exchange Management (Non-debt Instruments) Rules, 2019 SCHEDULE IV

- ✓ Investment in Indian companies can be by 'NRI or OCI'.
- ✓ Companies should be in business activities, which are under automatic route of FDI or after appropriate approvals.
- ✓ Investment through Remittance/NRE/FCNR/NRO and shall not be allowed to be repatriated abroad.
- ✓ Disinvestments receipts from shares to be credited in NRO A/c.

Investment in Unlisted Companies by NRI- Repatriable basis

Foreign Exchange Management (Non-debt Instruments) Rules, 2019 SCHEDULE III

- ✓ Investment in Indian companies can be done by any NRI or OCI.
- ✓ No restriction on Capital Contribution, subject to conditions of the Companies Act.
- ✓ Companies should be in business activities, which are under automatic route of FDI or after appropriate approvals.
- ✓ Investments through Remittance/NRE/FCNR A/c.
- ✓ Disinvestments receipts from Indian companies can be remitted out of India or can be credited in NRE A/c

Investment in Unlisted Companies by NRI- Repatriable basis

Notification No. FEMA. 395/2019-RB

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

Reporting for foreign investment in India

No.	Form	Time Limit
1.	Foreign Currency-Gross Provisional Return (FC-GPR)	30 days from issue of security.
2.	Annual Return on Foreign Liabilities and Assets (FLA)	Before the 15th day of July of each year.
3.	Foreign Currency-Transfer of Shares (FC-TRS)	Within sixty days of transfer of equity instruments or receipt / remittance of funds whichever is earlier
4.	Valuation Report shall be taken from CA/Merchant Banker	During application for incorporation
5.	CS Certificate	During application for incorporation

NRI as Director of an Indian company

- ✓ As per Section 149(3) of the Companies Act, 2013 every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.
- ✓ Therefore, one or more NRI can become a director/s in any Indian company provided there is at least one resident director.

Investment in Unlisted Companies by NRI

Taxation of Companies

- ✓ The incomes can be distributed in form of interest on deposits and director remuneration to the partners. Such distributions will become the incomes of the respective partners taxable at normal slab rates of income.
- ✓ The balance income of the firm will be taxable at an effective tax rate of 26% under the old regime and at an effective tax rate of 25.17% under the new regime u/s 115BAA (with applicable conditions).
- ✓ Surcharge at 7% if the income crosses Rs.1 crore and 12% if the income crosses Rs.10 crores will be applicable on the tax liability.
- ✓ The income distributed after such payment of tax in form of dividend will be taxable in the hands of partners as per normal slab rates.

Inbound Investment by NRI - Documentation

Structures	Proprietorship	Partnership	LLP	Private Ltd.	Public Ltd.
<u>Documents Required</u>	<ul style="list-style-type: none"> - PAN card - Passport - Address Proof of home country - Registered Office Proof 	<ul style="list-style-type: none"> -PAN card of all partners - Passport of all partners -Address proof of all partners - Proof of Business Place 	<ul style="list-style-type: none"> -PAN card of all partners - Passport of all partners -Address proof of all partners - Proof of Business Place 	<ul style="list-style-type: none"> - PAN card of all directors -Passport of all directors - Address proof of all directors - Proof of Business Place 	<ul style="list-style-type: none"> - PAN card of all directors - Passport of all directors - Address proof of all directors - Proof of Business Place

Inbound Investment by NRI - Documentation

Structures	Proprietorship	Partnership	LLP
<u>Steps to Register</u>	<ul style="list-style-type: none">-Open a Bank Account-MSME Registration- Shop and Establishment Act License- GST Registration	<ul style="list-style-type: none">-Draft a Partnership Deed- Apply for PAN card-Open a Bank Account-Certificate from ROF	<ul style="list-style-type: none">-Obtain Digital Signature Certificate of all the designated partners.-Apply for Designated Partner Identification Number (DPIN)-Reservation and approval of name-Incorporation of LLP-File LLP Agreement- Open a Bank Account

Inbound Investment by NRI - Documentation

Structures	Private Ltd.	Public Ltd.
<u>Steps to Register</u>	<ul style="list-style-type: none">-Obtain Digital Signature of all the designated partners.-Apply for Director Identification Number (DIN) -Reservation and approval of name-MoA & AoA, SPICe INC-32-Obtain Certificate of Incorporation-PAN & TAN Application- Open a Bank Account	<ul style="list-style-type: none">-Obtain Digital Signature of all the designated partners.-Apply for Director Identification Number (DIN)-MoA & AoA, SPICe INC-32-Obtain Certificate of Incorporation-PAN & TAN Application- Open a Bank Account

Loans by NRI/OCI to Resident Indians



Loans by NRI / OCI

On Repatriable Basis in Foreign Currency :

Notification No. FEMA.3(R)/2018-RB

Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

As per the above mentioned RBI Regulation, Loan can be given by NRI/OCI 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 / OCI

On Non Repatriable Basis in Indian Rupees

Notification No. FEMA.3(R)/2018-RB

Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

As per the above mentioned RBI Regulation, Loan can be given by NRI/OCI 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 / OCI

On Non Repatriable Basis in Indian Rupees

Notification No. FEMA.3(R)/2018-RB

**Foreign Exchange Management (Borrowing and Lending) Regulations,
2018**

- ✓ **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.**

Loans by NRI / OCI

Summary

Tabular presentation of Gifts by
NRI to Resident Indian

Particulars	Relatives	Others
Loan in Indian Rupees on Non-Repatriable Basis	Permitted	Permitted
Loans in Foreign Currency on Repatriable Basis	Permitted	Not Permitted

Loans by NRI / OCI

On Non Repatriable Basis in Indian Rupees to Indian proprietorship concern/ partnership firm or company on non-repatriation basis from NRI

Notification No. FEMA 5(R)/2016-RB

Foreign Exchange Management (Deposit) Regulations, 2016

Deposit and repayment to and from NRO A/c.

- ✓ **The maturity period of deposit shall not exceed 3 years and has to be repaid within 3 years.**
- ✓ **The rate of interest payable on deposits shall not exceed the ceiling rate prescribed under Companies Act.**

Loans by NRI / OCI

On Non Repatriable Basis in Indian Rupees to Indian proprietorship concern/ partnership firm or company on non-repatriation basis from NRI

Notification No. FEMA 5(R)/2016-RB

Foreign Exchange Management (Deposit) Regulations, 2016

- ✓ There are a lot of regulatory restrictions on acceptance of deposits from NRI on repatriable basis (through NRE bank A/c). Therefore, it is advisable to accept deposits from NRI on non-repatriable basis (through NRO bank A/c).
- ✓ The funds will flow from and back to the NRO bank A/c of the NRI in India.

Loans by NRI / OCI

On Non Repatriable Basis in Indian Rupees to Indian proprietorship concern/ partnership firm or company on non-repatriable basis from NRI

Notification No. FEMA 5(R)/2016-RB

Foreign Exchange Management (Deposit) Regulations, 2016

- ✓ **Any business concern accepting deposits from NRI shall not exceed the rate prescribed under Companies (Acceptance of Deposits) Rules, 2014.**
- ✓ **As per the above Company Law regulation, the interest on deposit cannot exceed maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.**
- ✓ **The deposit shall not be utilized for relending or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern or firm or company engaged in such activity.**

Loans by NRI / OCI

Maximum limit of acceptance of deposits by companies as per Companies Act, 2013

- ✓ As per section 73 of the Companies Act, 2013, the company can accept deposits from its directors and their relatives* without any limit.
 - ✓ Deposits from members can also be accepted up to 100% percent of aggregate of the paid up share capital, free reserves and Securities Premium account.
 - ✓ The deposits should not be from borrowed funds.
 - ✓ So, a private company can accept money from NRI directors & their relatives without any upper limit and from members of the company up to the specified limits if the conditions are met. Loan from any other party is strictly prohibited.
- *Relative as per section 2(77) of the Companies Act, 2013.

Loans by NRI / OCI

Loans from banks against security of funds held in the NRO/NRE bank account to NRI or to third parties:

Notification No. FEMA 5(R)/2016-RB

Foreign Exchange Management (Deposit) Regulations, 2016

- ✓ Loans against NRO/NRE fixed deposits can be availed in rupees to NRI or any other person in India.
- ✓ The loan funds shall be utilized only in India for personal requirements or business purpose and not for carrying on agricultural/ plantation activities or real estate business, or for relending.
- ✓ Loans against NRE deposits can also be used by the depositor for acquiring flat/house in India for his own residential use.

Loans by NRI / OCI

Loans from banks against security of funds held in the NRO/NRE bank account to NRI or to third parties:

Notification No. FEMA 5(R)/2016-RB

Foreign Exchange Management (Deposit) Regulations, 2016

- ✓ There should be no direct or indirect foreign exchange consideration (monetary benefit) to the NRI agreeing to pledge his deposits with the to enable the resident individual/ firm/ company to obtain such facilities.
- ✓ Corresponding branches of banks in foreign countries can lend loans against security of deposits in NRE/NRO account in India, provided advances are fully secured by the fixed deposits and as per the regulations prescribed.

Loans by to Resident Indians to NRI/OCI



Gifts by NRI/PIO to Residents in India

**Please refer to the presentation titled
'FEMA Regulations for Resident Indians'**

Gifts by NRI/OCI to Residents in India



Gifts by NRI/OCI to Residents in India

Implications under FEMA, 1999

Gift by NRI /OCI from NRO & NRE Account

- ✓ NRI/OCI 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/OCI can even gift cash to Residents (Sec. 9 FEMA). Resident cannot retain currency more than US\$ 2000 or equivalent.

Gifts by NRI/OCI 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.

Gifts by NRI/OCI to Residents in India

Following receipts in cash or kind are tax free U/s. 56 (2) of the Income Tax Act:

- 1. Any amount to the extent of Rs 50,000**
- 2. From following persons without any upper limit:**
In case of an individual :
 - A. Spouse of the individual.**
 - B. Brother or Sister of the individual.**
 - C. Brother or Sister of the spouse of the individual.**
 - D. Brother or Sister of either of the parents of the individual.**
 - E. Any lineal ascendant or descendant of the individual.**
 - F. Any lineal ascendant or descendant of the spouse of an individual.**
Spouse of the person referred to in items (B) to (F).
- 3. On the occasion of the marriage of an individual.**
- 4. Under a Will or by way of inheritance.**

Gifts by NRI/OCI 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/OCI 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.

Taxability of asset received in succession

Provision of Sec. 68 of Income Tax Act needs to be considered :

- ✓ 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 on above + 4% Cess on total tax (excluding surcharge) = 78% (If disclosed in the Return of Income).
 - 78% + 6% (10% of tax payable) [Penalty U/s. 271AAC] = 84%. (In case of detection during the Assessment Proceedings).
- ✓ Can invite prosecution (Imprisonment & Fine) U/s. 276C(1), 277, 277A of the Income Tax Act.

Gifts by NRI/OCI to Residents in India

Rule 6 of Foreign Contribution (Regulation) Rules, 2011 :

- ✓ Intimation on Form FC – 1 required :
 - In case of gift from relative* in currency, article (also for personal use) or security from a foreigner (non Indian citizen).
 - Intimation to be made within 30 days. Intimation to be done online in Form FC – 1.
 - Intimation is required when market value of the gift or the value of funds received exceed Rs. 1 lakh.
- ✓ Intimation on Form FC – 1 not required :
 - In case a gift from relative holding Indian passport.
 - In case a gift from non relative foreigner.

*Relative as per section 2(77) of the Companies Act, 2013.

Gift implications by NRI/OCI to Residents

Assets	Permissibility under FEMA		Liability under Income tax	
	Gift from Relative	Gift from Non Relative	Gift from Relative	Gift from Non Relative
	Relative as per section 2(77) of the Companies Act, 2013.		Relative as per section 56 of the Income Tax Act, 1961.	
Monetary funds through banking channels in foreign currency or Indian rupees	Yes*	Yes	None	Taxable under section 56(2)(x) in the hands of recipient
Any Immovable Property in India	Yes	Yes	None	Taxable under section 56(2)(x) in the hands of recipient

***Subject to fulfilment of compliance under the Foreign Contribution (Regulation) Rules, 2011**

Gift implications by NRI/OCI to Residents

Assets	Permissibility under FEMA		Liability under Income tax	
	Gift from Relative	Gift from Non Relative	Gift from Relative	Gift from Non Relative
	Relative as per section 2(77) of the Companies Act, 2013.		Relative as per section 56 of the Income Tax Act, 1961.	
Shares, securities of an Indian company or mutual fund units	Yes	Yes	None	Taxable under section 56(2)(x) in the hands of recipient
Interest in LLP	Yes	Yes	None	Taxable under section 56(2)(x) in the hands of recipient

Gift implications by NRI/OCI to another NRI/OCI in India



Gift implications by NRI/OCI to another NRI/OCI in India

Assets	Permissibility under FEMA		Liability under Income tax	
	Gift from Relative	Gift from Non Relative	Gift from Relative	Gift from Non Relative
	Relative as per section 2(77) of the Companies Act, 2013.		Relative as per section 56 of the Income Tax Act, 1961.	
Monetary funds through banking channels (NRE to another NRE/NRO account or NRO to another NRO account)	Yes - in Indian Rupees without any limits		None	Taxable under section 56(2)(x) in the hands of recipient
Immovable Property in India (Other than agricultural property)	Yes	No	None	Taxable under section 56(2)(x) in the hands of recipient

Gift implications by NRI/OCI to another NRI/OCI in India

Assets	Permissibility under FEMA		Liability under Income tax	
	Gift from Relative	Gift from Non Relative	Gift from Relative	Gift from Non Relative
	Relative as per section 2(77) of the Companies Act, 2013.		Relative as per section 56 of the Income Tax Act, 1961.	
Shares, securities of an Indian company or mutual fund units	Yes*	No	None	Not applicable as not compliant under FEMA
Interest in LLP	No	No	None	Not applicable as not compliant under FEMA

***When the securities gifted are to be held on a repatriable basis, entry routes, sectoral caps or investment limits, etc. as may be prescribed shall have to be complied.**

Gift implications by Residents to NRI/OCI



Gifts by NRI/PIO to Residents in India

**Please refer to the presentation titled
'NRI – Income Tax'**

Cash carrying limits in foreign currency



Cash carrying limits in foreign currency

RBI FAQ:

[https://www.rbi.org.in/Scripts/FAQView.aspx?Id=22#:~:text=You%20can%20bring%20into%20India,\)%2C%20on%20arrival%20in%20India.](https://www.rbi.org.in/Scripts/FAQView.aspx?Id=22#:~:text=You%20can%20bring%20into%20India,)%2C%20on%20arrival%20in%20India.)

- ✓ Any person coming into India from abroad can bring with him foreign exchange without any limit.
- ✓ However, if the aggregate value of foreign currency exceeds USD 5,000, it should be declared to the Customs Authorities at the Airport in the Currency Declaration Form (CDF), on arrival in India.
- ✓ Foreign exchange can be credited by NRI himself in NRO/NRE bank accounts.

PPF & NRI



PPF & NRI

Public Provident Fund (PPF)

- ✓ NRI are not allowed to open PPF account in India.
- ✓ If the PPF account is opened as resident status and later became NRI, they are allowed to make contribution to the account and continue that account up to maturity.
- ✓ On Maturity, the NRI have to compulsorily close the account. The maturity receipts will get credited to NRO bank account.

PPF & NRI

Public Provident Fund (PPF)

- ✓ The income generated (interest income) from PPF investment is fully Tax Free. These incomes are liable to tax in respective foreign country.
- ✓ Changes in PPF Scheme on 03/10/2017 has been revoked vide Notification No. 01/10/2016 – NS. Ministry of Finance Dt. 23/02/2018.

AADHAAR & NRI



AADHAAR Card & NRI

- ✓ Under the AADHAAR (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016.
 - Resident means an individual (any nationality) who has resided in India for a period or periods amounting in all to 182 days or more in 12 months immediately preceding the date of application for enrolment.

AADHAAR Card & NRI

- ✓ Under Sec. 139AA & Subsequent notification, all PAN Card holders, who are NRI under the Income Tax Act 1961, are :
- Supposed to link their AADHAAR Card with PAN, if they hold the AADHAAR Card.
 - If they do not hold the AADHAAR Card, they are exempted from the requirement of linking it with the PAN Card of Income Tax.
 - As per AADHAAR Act, NRI / OCI are not eligible to obtain AADHAAR Card, hence are fully exempted to produce AADHAAR for any verification.

FEMA & RBI Regulations on Transmission of Assets



FEMA & RBI Regulations on Transmission of Assets

- ✓ In case of transmission of any asset (transfer after death of the owner) other than immovable property, the rules shall be checked from the viewpoint of the successor.
- ✓ When the successor of the asset is a NRI, he/she shall be entitled to transmission in the same manner, terms & conditions as he/she is entitled to invest in that type of asset.
- ✓ For e.g., when the NRI is unable to invest in a particular company due sectoral caps on repatriable basis, the transmission of shares of that company will not take place to any NRI on such terms.
- ✓ The summarized regulation for transmission of immovable properties is stated in the next slide.

FEMA & RBI Regulations on Transmission of Assets

✓ Summarised regulation for Immovable Assets

Foreign Exchange Management (Non-debt Instruments) Rules, 2019

CHAPTER IX

Name of Asset	Regulations for transmission to NRI
<u>Any Immovable asset</u> (Including <u>Agricultural Land</u> , Plantation and Farm House)	<ol style="list-style-type: none">1) From <u>NRI / OCI</u> who has lawfully acquired it.2) From a person <u>Resident</u> in India3) Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong, Macau or North Korea (DPRK), are <u>not allowed</u> to acquire immovable property in India without <u>prior approval from the Reserve Bank of India</u>.

Penalty for contraventions by NRI under FEMA



Penalty for various contraventions by NRI under FEMA

General Penalty under FEMA

✓ Under section 13 of FEMA,

If any person contravenes any provision of this Act/rule/regulation/notification/direction/order issued/any condition subject to which an authorisation is issued by the Reserve Bank, he shall,

- be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable,
- or up to two lakh rupees where the amount is not quantifiable,
- and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Penalty for various contraventions by NRI under FEMA

Prosecution (Criminal proceedings) under FEMA

✓ Under section 13 (1C) of FEMA,

If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding Rs. 1 Crore (F. No. A-12011/02/2014-Ad.ED), he shall:

- be, in addition to the penalty be punishable with imprisonment for a term which may extend to five years and with fine.
- Therefore, there are no prosecution provisions for NRI under FEMA other than the above-stated provision.

Penalty for various contraventions by NRI under FEMA

Arrest for investigation under FEMA

- ✓ Under section 14 (3) & 14 (4) of FEMA,
- An arrest warrant may be issued if any defaulter fails to pay the penalty as may be levied within the specified date.
- It may also be issued if the Adjudicating Authority is satisfied, that the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.
- Where appearance is not made pursuant to a notice issued and served, the Adjudicating Authority may issue an arrest warrant for the defaulter.

Regulations on transfer of Immovable Assets by NRI



Regulations on transfer of Immovable Assets by NRI

NRI intending to SELL any immovable property

Foreign Exchange Management (Non-debt Instruments) Rules, 2019

CHAPTER IX

Eligible Buyer	Type of Property which can be sold	Repatriation of proceeds
Resident Indian under FEMA	<u>Any type of immovable property</u>	Sale proceeds to be <u>credited</u> to: NRE/FCNR Bank A/c if property is purchased acquired through NRE/FCNR Bank A/c or direct remittances (subject to payment of taxes) <u>OR</u> NRO bank A/c repatriable under the US\$1 million scheme if acquired through NRO bank A/c.
NRI	<u>Any type of property</u> (other than Agricultural land, plantation land or farm house)	
Any foreign citizen (Not of Indian origin)	<u>NOT ALLOWED</u> unless specifically permitted by RBI	

Regulations on transfer of Immovable Assets by NRI

NRI intending to PURCHASE any immovable property

Foreign Exchange Management (Non-debt Instruments) Rules, 2019

CHAPTER IX

Eligible Seller	Type of Property which can be purchased	Mode of payment
Resident Indian under FEMA	<u>Any type of immovable property</u> (other than Agricultural land, plantation land or farm house)	NRE Bank A/c (Repatriation basis) or NRO Bank A/c (Non-Repatriable basis) or direct remittances received from abroad
NRI	<u>Any type of immovable property</u> (other than Agricultural land, plantation land or farm house)	
Any foreign citizen (Not of Indian origin)	<u>Any type of immovable property</u> (other than Agricultural land, plantation land or farm house) if it was <u>lawfully acquired</u> by the seller and <u>RBI approval for such transfer is obtained.</u>	

Regulations on transfer of Immovable Assets by NRI

Joint acquisition of NRI/OCI with spouse who is a foreign citizen not of Indian origin

Foreign Exchange Management (Non-debt Instruments) Rules, 2019 - CHAPTER IX

- ✓ A foreign citizen not of Indian origin, who is a spouse of a NRI/OCI can acquire one immovable property in India (other than agricultural land or farm house or plantation property) jointly with the spouse in India.
 - ✓ The marriage should have subsisted for at least two years immediately preceding the acquisition of such property.
 - ✓ The funds for the acquisition can be through NRO/NRE bank account of the NRI/OCI or from direct remittances received from abroad.
-

Regulations on transfer of Immovable Assets by NRI

NRI intending to INHERIT any immovable property

Foreign Exchange Management (Non-debt Instruments) Rules, 2019

CHAPTER IX

Eligible Giver	Type of Property which can be inherited
Resident Indian under FEMA	Any type of immovable property
NRI	Any type of immovable property
Any foreign citizen (Not of Indian origin)	Any property if it was lawfully acquired by the person

Disclaimer

This Presentation contains personal views of the Speaker Mr. Daxesh D. Kothari on the subject. The speaker and the company Ashutosh Financial Services Pvt. Ltd. does not give any professional investment advice. Financial Products are subject to related risks and one should read the offer documents carefully before acting on it.

This Presentation may contain references, wherever possible, website links, regulations or other policy materials. The 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 appropriate professional advice.

Thank you...

Questions ?



ASHUTOSH®



We are an
ISO 9001:2015
certified company

ASHUTOSH FINANCIAL SERVICES PVT. LTD.

• INVESTMENTS • INSURANCE • INCOME TAX & ESTATE PLANNING • NRI SERVICES

Our Divisions



Ashutosh Investment Services

• Mutual Funds • Bonds • FDs • PMS
• AIF • Foreign Equity

Email: relationship@ashutoshfinserv.com

Mo. +91 937 733 5959



Ashutosh Insurance Services

• Insurance for your Life, Health & Assets
• Retirement Planning

Email: insurance@ashutoshfinserv.com

Mo.: +91 972 521 9090



Kothari & Co.

• Income Tax & Estate Planning
Consultants

Email: lawserve@ashutoshfinserv.com

Mo.: +91 937 696 2244



Ashutosh NRI Services

• Investments • Indian Income Tax • FEMA
• Foreign Tax Compliance

Email: nris2@ashutoshfinserv.com

Mo.: +91 704 359 3388



www.ashutoshfinserv.com



ashutoshfinserv

www.ashutoshfinserv.com

ASHUTOSH®