

FEMA REGULATIONS FOR RESIDENTS



PRESENTATION INDEX

Sr. No.	Topic	Slide No.
1.	Loans & Gifts by Residents to Non Resident Liberalised Remittance Schemes (LRS)	4-7
2.	Loans by to Resident Indians to NRI/OCI	8-11
3.	Loans by Resident Companies to NRI/OCI	12-16
4.	Residency in U.S.A. under EB-5 Visa Program	17-19
5.	Overseas Direct Investments	20-21
6.	Loans by NRI/OCI to Resident Indians	22-23
7.	Gifts by NRI/PIO to Residents in India	24-25
8.	Gifts by Resident Indians to NRI/OCI	26-30
9.	Equalisation Levy for Resident Indians	31-34

PRESENTATION INDEX

Sr. No.	Topic	Slide No.
10.	Regulations on transfer of Immovable Assets by Resident Indian	35-38
11.	Cash carrying limits in foreign currency	39-40
12.	Disclaimer	41

Liberalised Remittance Scheme (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).
- ✓ Form A2 has to be filled and submitted to the bank giving following details:
 - PAN card
 - Amount in INR & foreign currency
 - Purpose of remittance
 - Details of beneficiary
- ✓ Tax shall be collected at 5% (TCS) on remittances exceeding Rs. 7 lakhs during the financial year. Refund/credit of the same can be obtained while filing Return of Income.

Loans by to Resident Indians to NRI/OCI



Loans by to Resident Indians to NRI/OCI

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

Loans by to Resident Indians to NRI/OCI

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

Loans by to Resident Indians to NRI/OCI

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
Loans in Foreign Currency	Not Permitted	Not Permitted

Loans by Resident Companies to NRI/OCI



Loans by Resident Companies to NRI/OCI

Maximum limit of giving loans by companies to NRI directors as per Companies Act, 2013

- ✓ Section 185(1) of the Act states that a company cannot –
 - Advance loan directly or indirectly, or
 - Advance loan which includes a loan represented by a book debt, or
 - Give guarantee or provide security with connection to any loan takento a director, director of its holding company, partner or relative of any director, or any firm in which a director is a relative or a partner.
- ✓ As per section 185 of the Companies Act, 2013, money accepted from directors and relatives of the directors of the company, is not considered as deposits.

Loans by Resident Companies to NRI/OCI

Maximum limit of giving loans by companies to directors as per Companies Act, 2013

- ✓ In case of a Private Company, if all the following conditions are satisfied, Loans may be given to Directors or Director's relatives.
 1. No other Company has invested any money towards the share capital of the Private Company.
 2. If the Company has borrowing from Banks or Financial Institutions or any other company, it should be less than twice of its paid up Share Capital or Rs. 50 Crores, whichever is lower.
 3. The Company has not defaulted in repayment of such borrowing anytime.

Loans by Resident Companies to NRI/OCI

Maximum limit of giving loans by companies to directors as per Companies Act, 2013

- ✓ Loan may be given to Directors or Directors' Relatives or any other person specified in the above slide up to the higher of following limits:
 - i. 60% of Share Capital + Free Reserve + Security Premium
OR
 - ii. 100% of Free Reserve + Security Premium
- ✓ However, the company can give loans to its directors as a part of the conditions of service extended to all its employees or in the ordinary course of its business or to its wholly-owned subsidiary company provided other conditions as stated in the act are satisfied.

Loans by Resident Companies to NRI/OCI

Maximum limit of giving loans by companies to directors & other persons as per Companies Act, 2013

- ✓ Nothing in the above shall be applied to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an Arm's Length basis.
- ✓ Loans can be granted to any persons other than directors or their relatives (including shareholders) by the company without any limits.
- ✓ It is important to note that if shareholders are holding 10% or more of equity capital of the company (in which the public are not substantially interested), and receive any loans or deposits, the same shall be treated as 'Deemed Dividend' and shall be taxable in the hands of the shareholder.

Residency in U.S.A. under EB-5 Visa Program



Residency in U.S.A. under EB-5 Visa Program

Obtaining US Residency under EB-5 Visa Program:

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 funds for the purpose of settling abroad (emigration).
- ✓ However, the remittance cannot be made for overseas investments to become eligible for immigration (earn points) in any foreign country.
- ✓ Therefore, remittances in form of emigration by the individual and gifts by different family members can be made to the extent of US\$ 250,000 per person across single or multiple years to transfer funds totaling to US\$ 900,000 required under the program.
- ✓ The entire chain of the source of the funds from India has to be explained and documented while applying. For e.g. sale of asset, professional income, borrowings, etc.

Residency in U.S.A. under EB-5 Visa Program

- ✓ The remittances can be planned through the following two routes:
 1. If a person has prior connection with U.S.A. (Green Card, SSN, etc.) or leaves India for the purpose of higher education, employment, business or for an uncertain time period before applying for EB-5, he can claim himself to be a Non-Resident under FEMA and transfer US\$ 900,000 in two parts since such person is allowed to remit US\$ 1 million per year.
 2. If the above plan is not feasible, the family members of the person can transfer & pool funds in an escrow joint bank account in U.S.A. Thereafter, such funds can be utilized to make an application for the family member intending to apply for EB-5. The funds can be disclosed in form of loan or gifts received from family members.

Overseas Direct Investments



Overseas Direct Investments

Overseas Direct Investments:

RBI Regulation No – XXX

FED Master Direction No . XXXX

✓ PENDING

✓

✓

✓

Loans by NRI/OCI to Resident Indians



Loans by NRI / PIO

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

Gifts by NRI/PIO to Residents in India

Gifts by NRI/PIO to Residents in India

**Please refer to the presentation titled
'NRI - FEMA & other regulations'**

Gifts by Resident Indians to NRI/OCI



Gifts by Resident Indians to NRI/OCI

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

Gifts by Resident Indians to NRI/OCI

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

Gifts by Resident Indians to NRI/OCI

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	Yes - in foreign currency as well as Indian Rupees; restricted to USD 250,000 per FY	Yes - only in foreign currency; restricted to USD 250,000 per FY	None	Taxable under section 56(2)(x) in the hands of recipient (Refer note below)
Immovable Property in India (Other than agricultural property)	Yes	Yes	None	Taxable under section 56(2)(x) in the hands of recipient

Note – As per section 9 of the Income Tax Act, any sum of money received from persons other than relatives on or after 5th July 2019 by a non-resident from a resident as a gift whether in or outside India shall be taxable under section 56 in India. Hence, it is liable to Tax Deduction at Source (TDS) under section 195.

Gifts by Resident Indians to NRI/OCI

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 - several restrictions applicable (Note 1)	No	None	Not applicable as not compliant under FEMA
Interest in LLP	No	No	None	Not applicable as not compliant under FEMA

Note 1: The restrictions are as follows:

- 1. Prior approval of RBI is obtained and the recipient should be an OCI cardholder or Indian citizen.**
- 2. The company whose shares are held do not breach the NRI shareholding caps or sectoral caps in the respective company or sector.**
- 3. The aggregate value of transfer of the securities does not exceed \$50000 in a given financial year.**

Equalisation Levy for Resident Indians



Equalisation Levy for Resident Indians

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 rate of the tax is 30%, plus surcharge, if applicable and cess at 4%.**

Equalisation Levy for Resident Indians

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.

Equalisation Levy for Resident Indians

Payment of Equalisation Levy (Additional levy from FY 20-21):

- ✓ Any payment made by (specified buyer):
 1. A person resident in India or a
 2. Person buying goods from IP address in India.
 3. Non resident in case of sale of advertisement in India or sale of data collected from person in India.

to
E-commerce operator in India
for
Online sale of goods or provision of services or both owned by the e-commerce operator by a E-commerce operator.
- ✓ The person is required to deduct levy @ 2%, if where the total turnover of e-commerce operator from specified buyers exceeds Rs. 2 crore in a financial year.
- ✓ Incomes subjected to the same are exempted from Income Tax.
The above levy shall not be applicable to persons who are levied the 6% earlier levy or persons having PE in India.

Regulations on transfer of Immovable Assets by Resident Indian



Regulations on transfer of Immovable Assets by Resident Indian

Resident Indian 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
Resident Indian under FEMA	<u>Any type of immovable property</u>
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 Resident Indian

Resident Indian 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	Tax Deduction at Source (TDS) requirement
Resident Indian under FEMA	<u>Any type of immovable property</u> (other than Agricultural land, plantation land or farm house)	At 1% on the sale consideration u/s 194IA
NRI	<u>Any type of immovable property</u> (other than Agricultural land, plantation land or farm house)	At 31.2% (rates in force) on the sale consideration u/s 195
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 Resident Indian

Resident Indian 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

Cash carrying limits in foreign currency

Cash carrying limits in foreign currency

- ✓ **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.**
- ✓ **Resident travellers going to all countries are allowed to purchase foreign currency notes / coins only up to USD 3000 per visit. Balance amount can be carried in the form of store value cards, travellers cheque or banker's draft.**
- ✓ **A person resident in India shall retain foreign currency notes, bank notes and foreign currency traveller's cheques not exceeding US\$ 2000 or its equivalent in aggregate. (Circular No.47/2015-16 [(1)/11(R)])**

Disclaimer

This Presentation contains personal views of the Speaker Mr. Daxesh D. Kothari on the subject, which should not be relied or acted upon without specific professional 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, 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 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®