



***NRI's Guide to Investment in Immovable Property and Tax  
Planning***

**Rajkumar S. Adukia**  
**B.Com (Hons.), LL.B, ICWAI, FCA**

## Preface

The last few years have seen tremendous growth in the real estate sector of India. Adding impetus to the growth is the liberal policy adopted by the Government of India towards foreign investment in this sector. It appears as if this is the right time for the NRIs to invest in immovable property in India. A time to make their money work at home, while they work abroad.

**With this book, I have made an attempt to provide answers to the problems commonly faced by a NRI who has already invested or is desirous of investing in immovable property in India.** This guide is a simple primer on NRI investments in immovable property, repatriation of proceeds and tax incidences on remittances. **This guide provides a detailed outlook on some standard issues in NRI investment in immovable property, repatriation and tax planning, providing non-residents guidance to investing in immovable property in the country**

With a view to cover the issues of acquiring immovable property in India as well as outside India, I have divided the guide into two parts. Part A deals with acquisition of immovable property in India and Part B talks about acquisition of immovable property outside India. Part A consists of 27 chapters dealing with a host of topics right from the definition of NRI/PIO to differences between FEMA and FERA to tax planning for NRIs. Part B deals with the regulations governing acquisition of immovable property outside India.

Ever since India embarked on the path of liberalisation, the rules relating to NRI investment and repatriation have been considerably relaxed. With proper planning and adequate knowledge of the regulations, it is for the NRIs to make the most of it. I am confident that this guide serves that purpose.

I hope the NRI community would find this guide immensely helpful for their real estate dealings in India. Any suggestions for further improvement of this guide are most welcome.

## Topics Discussed

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## ***Part A***

### **Introduction**

Investing in immovable properties in India is not a Herculean task for the NRIs anymore. We have come a long way from the days of FERA (Foreign Exchange Regulation Act) regime, when buying or selling of immovable property was governed by the citizenship of a person. According to an estimate, about 25 million NRIs are looking at home country for potential investment opportunities in real estate. The FDI under automatic route in real estate development has also augmented the confidence of overseas Indians to forge strategic alliances with global realty giants for testing select markets across the country. **Before we go into the details of the law governing NRI investment in real estate, let us first understand the basic concepts**

### **Concept of NRI/PIO under FEMA**

#### **Who is a NRI?**

Section 2 of the Foreign Exchange Management Act, 1999 (FEMA) deals with various definitions. It defines a person resident in India and a person resident outside India. However, it does not define the term non-resident nor it does define the term Non Resident Indian (NRI).

However, Notification No. 5/2000-RB (dealing with various kinds of Bank Accounts) defines the term Non Resident Indian (NRI) to mean a person resident outside India who is either a citizen of India or is a person of Indian origin. In short, the definition of the term NRI is contextual and can have slightly different connotations for FEMA/Income Tax/Acquisition of Immovable Property etc. A Non-Resident Indian is termed as a "person resident outside India". The non-resident Indians are classified into three categories

- (1) Non-resident Indian Nationals
- (2) Non-resident Indians of Indian Origin/Persons of Indian Origin And
- (3) Overseas Corporate Bodies (OCB)

**Non-Resident Indian National (NRI)**

An Indian Citizen who stays abroad for employment/carrying on business, to pursue a vocation outside India or under circumstances indicating an intention for an uncertain duration of stay abroad is a non-resident. (Persons posted in U.N. organisations and officials deputed abroad by



Central/State Governments and Public Sector undertakings on temporary assignments are also treated as non-residents). Non-resident foreign citizens of Indian Origin are treated on par with non-resident Indian citizens (NRIs) for the purpose of certain facilities.

**Clause 2 (w) of FEMA 1999** indicates that "A person resident outside India" means a person who is not resident in India.

**Clause 2 (v) of FEMA 1999** defines a "resident" as follows:

(i) A person residing in India for more than 182 days during the preceding FY but does not include-

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

- (a) for or on taking up employment or who stays outside India, or
- (b) for carrying on outside India a business or vocation in India, or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period:

**(B)** a person who has come to or stays in India in either case, other wise than-

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

(ii) Any person or body corporate registered or incorporated in India.

(iii) an office, branch or agency in India owned or controlled by a person resident outside India.

(iv) an office, branch or agency outside India owned or controlled by a person resident in India.

### **Person of Indian Origin (PIO)**

For the purposes of availing of the facilities of opening and maintenance of bank accounts and

investments in shares/securities in India, Person of Indian Origin means a citizen of any country other than Pakistan or Bangladesh if,

- (i) he at any time, held an Indian passport
- (ii) he or either of his parents or any of his grand parents was a citizen of India by virtue of the Constitution of India or Citizenship Act, 1955 (57 of 1995)
- (iii) the person is a spouse of an Indian citizen



For investments in immovable properties, Person of Indian Origin means an individual (not being a citizen of Pakistan or Bangladesh or Afghanistan or Bhutan or Sri Lanka or Nepal or China or Iran)

- (i) who at any time, held an Indian passport
- (ii) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955)

Further, a non-resident can be classified into the following six categories:

**A person who is a non-resident can belong to the following categories:**

Non-Resident

Foreign Citizen of Indian Origin

Foreign Citizen of Non-Indian Origin

Residing in India

Residing Outside India

Residing in India

Residing Outside India

### **Overseas Corporate Bodies (OCB)**

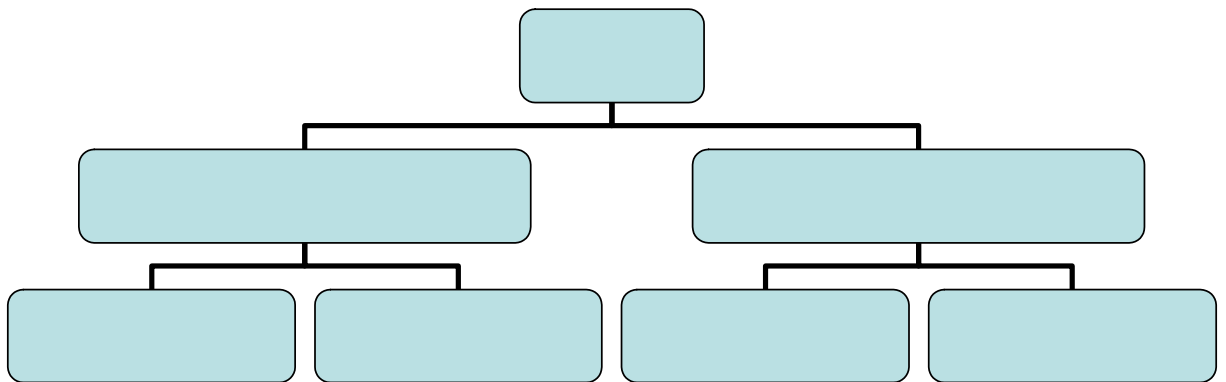
Overseas Corporate Bodies (OCBs) are bodies predominantly owned by individuals of Indian nationality or origin resident outside India and include overseas companies, partnership firms, societies and other corporate bodies which are owned, directly or indirectly, to the extent of at least 60% by individuals of Indian nationality or origin resident outside India, as also overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons. Such ownership interest should be actually held by them and not in the capacity as nominees. The various facilities granted to NRIs are also available with certain exceptions to OCBs as long as

the ownership/beneficial interest held in them by NRIs continue to be at least 60%.

### Income Tax Implications

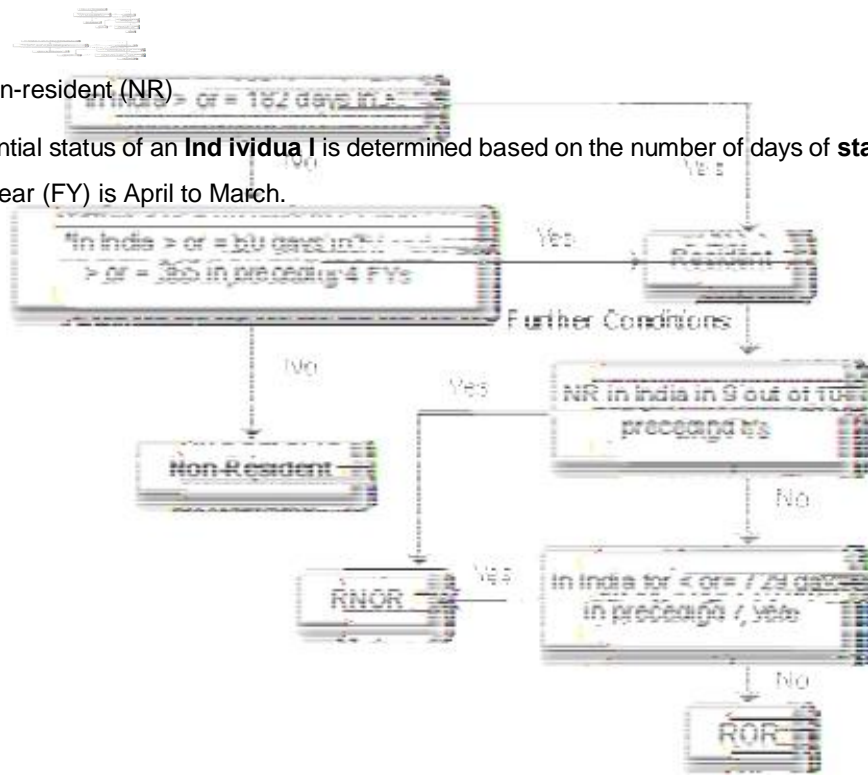
For the purposes of levy of tax, the Income-tax Act in India has classified the status of an individual assessee into three viz.,

1. Resident and ordinarily resident (ROR)
2. Resident but not ordinarily resident (RNOR)



### 3. Non-resident (NR)

The residential status of an **Individual** is determined based on the number of days of **stay** in India. Financial year (FY) is April to March.



*\*Not applicable to a resident going outside India for employment, a resident who leaves India as a member of crew of an Indian ship, an Indian citizen or person of Indian origin who is abroad and comes to India for a visit i.e. if such a person stays in India for less than 182 days, he would be a non-resident.*

In the case of a ROR, his global income is taxed in India. Normally a **returning Indian** would be assessed as RNOR on his return to India.

In the case of a **Non-resident**, only the income earned or received in India is taxed in India. Accordingly, income earned outside India would not be taxable in India.



India has contracted Double Tax Avoidance Agreements (DTAAs) with various countries. Taxability of the NRI's Indian income would be decided as per the provisions of these DTAAs. Most of these DTAAs contain provisions for lower rates of tax in case of incomes like dividend, royalties, fees for technical services etc. Provisions of some DTAAs provide interesting opportunities for efficient tax planning.

### **Legal Framework Governing Acquisition of Immovable Property in India by NRIs**

- (i) The Foreign Exchange Management Act, 1999 is the one that regulates foreign investment in India. Under this umbrella Act, Foreign Exchange Management (Acquisition and Transfer of Immovable Properties) Regulations, 2000 has been enacted vide Notification No. FEMA 21/2000-RB dated 3<sup>rd</sup> May 2000. These Regulations provide the guidelines for acquisition and transfer of immovable properties by NRIs.
- (ii) Income Tax Act, 1961
- (iii) Income Tax Rules, 1962
- (iv) Wealth Tax Act, 1957
- (v) Gift Tax Act, 1958
- (vi) Transfer of Property Act, 1882
- (vii) Notifications/Circulars by RBI
  - (a) A.P (DIR) Series Circular No. 93 dated 09.06.2003
  - (b) A.P (DIR) Series Circular No. 43 dated 08.12.2003
  - (c) Master Circular No. / 02 /2006-07dated 01.07.2006
  - (d) A.P (DIR) Series Circular No. 5 dated 16.08.2006

### **FERA vs. FEMA**

The difference between FERA and FEMA is not just a mere change of one word, from 'Regulation' to 'Management'. To understand the differences between the two statutes, we need to know the underlying principles that governed FERA. FERA was introduced at a time when forex reserves were real low. As such, it was believed that all foreign exchange earned by Indians rightfully belonged to the Government of India and had to be collected and relinquished to the Reserve Bank of India promptly.

When FEMA was enacted on 1.6.2000, there was a general misunderstanding among the NRIs that all restrictions and controls relating to foreign exchange transactions have been eliminated and that foreign exchange dealings would be allowed to be freely made after the introduction of

FEMA. This is not so. It is, of course, true that there is a great change in the perspective of FEMA in comparison with FERA. **But certain reasonable restrictions still exist in FEMA to manage foreign exchange transactions in a regulated manner. Under FEMA, various notifications and provisions of the RBI Exchange Control Manual have been brought together as separate regulations for various exchange transactions so that they are easily accessible to NRIs and other interested persons and also to make RBI rules and regulations transparent.** For example, the various types of accounts like NRE Account, FCNR Account, NRO Account, etc. were regulated through Exchange Control Manual and Notifications in this

[REDACTED]

regard. Now, the FEMA (Deposit) Regulations deal with the maintenance and operation of such accounts in crystal clear manner. Similar is the case with reference to other various aspects of foreign exchange.

The primary change that the FEMA has brought in is that FEMA is a civil law, whereas the FERA was a criminal law. Under the FEMA no prosecution would be imposed for violation of operating provisions, likewise, arrest and imprisonment would not be resorted to except in the solitary case where the person, alleged to have violated the provisions of the FEMA, audaciously decides not to pay the penalty imposed under Section 13 of the FEMA. In the same manner unrestrained enormous powers of Directorate of Enforcement have been chopped down to a considerable extent. Even the word "offence" is conspicuous by its absence in the concrete provisions of FEMA.

The provisions of FERA were draconian in nature. These provisions empowered the Enforcement Directorate to arrest any person, search any premises, seize documents and start proceedings against any person for contravention of FERA or for preparations of contravention of FERA. The violation under FERA was treated as criminal offence and the burden of proof was on the guilty.

FEMA has reduced the austerity of exchange control by removing / mitigating the effect of these provisions. The contravention has been treated as civil offence. Primarily, for an offence, the accused cannot be arrested. He can be arrested only for non-payment of the penalty imposed for contravention. Specific provision has been made by fixing a time limit of twenty-four hours for bringing the arrested person before the Adjudicating Authority. Similarly, in respect of appeals filed before the Appellate Tribunal, a period of 180 days has been specified for final disposal of the appeals. No such time limit was laid down under FERA. The powers of Enforcement Directorate have been substantially reduced and new provisions for Adjudicating Authority and Compounding of cases have been introduced.

FEMA contains 49 sections in total. Of these, only seven sections, namely, Sections 3 to 9 deal with certain acts to be done or not to be done in connection with transactions involving foreign



exchange, foreign security, etc. There are various sections from 16 to 35 relating only to adjudication and appeal. Further, one of the most important and distinguishing features of FEMA is that there is a provision for compounding of penalty as contained in Section 15 of FEMA, which was not available under FERA.

Whereas FERA contained 81 sections (some were deleted in the 1993 amendment of the Act) of which 32 sections related to operational part and the rest covered penal provisions, authority and



powers of Enforcement Directorate, etc. Out of the 49 sections of FEMA, 12 sections cover operational part and the rest contravention, penalties, adjudication, appeals, enforcement directorate, etc. What was a full section under FERA seems to have been reduced to a subclause under FEMA in some cases.

**For example,**

- (i) Section 13 of FERA provided for restrictions on import of foreign currency & foreign securities. Now this restriction is provided through a sub-clause 6(3)(g).
- (ii) Section 25 of FERA provided for restrictions on Indian residents holding immovable properties outside India. Now the restriction is under sub-clause 6(4).

FERA regulated not just the foreign exchange transactions but all financial transactions with the non-residents. FERA violation was treated as a crime. FERA primarily banned all transactions except those which were generally or specifically permitted by RBI. Whereas under FEMA, all current account transactions in forex like expenses which are not for capital purposes, are permitted except to that extent which is notified by the Central Government.

The Foreign Exchange Management Act, 1999 (FEMA) contains only the concrete and procedural aspects of Foreign Exchange Regulations. The detailed provisions in regard to various aspects connected with Foreign Exchange Regulations are found in Rules, Regulations and Notifications under FEMA issued or disseminated by the Government of India or RBI. Thus, the Government of India, in exercise of the powers conferred on it under Section 46 of FEMA, has made various sets of Rules, namely-

1. Foreign Exchange Management (Current Transactions) Rules, 2000.



2. Foreign Exchange (Compounding Proceedings) Rules, 2000.
  
3. Foreign Exchange Management (Adjudication Proceedings and Appeal), Rules, 2000.

4. Foreign Exchange (Authentication of Documents) Rules, 2000.
  
5. Foreign Exchange Management (Encashment of Draft, Cheque Instrument and Payment of Interest) Rules, 2000.

The fundamental difference between FERA and FEMA is as under:

Under FERA, a normal operative section would provide that “no person can do the following transactions without general/special permission”. Thus for example, section 9 prohibited all payments to non-residents. Then several notifications permitted payments subject to certain conditions. It meant that if there was no permission, a payment to a non-resident was prohibited.

Now under section 5, all current account transactions are permitted under FEMA. RBI may regulate certain payments by issuing notifications / circulars. If there is a current account payment on which no notification has been issued, prima facie, it is permitted.

There is yet another major transformation in the protocol as far as regulation concerning immovable property situated in India is concerned. Under FERA acquisition of immovable property in India was governed by “**citizenship criteria**”, whereas under FEMA the same is governed by “**residential status**” criteria. It means a foreign citizen who is resident in India (not being a citizen of any of the eight countries listed above) can purchase immovable property in India without any approval from RBI. He is also not required to file any declaration at the time of purchase of such immovable property.

### **Conclusion**

Thus FEMA has brought about a sea change in the hitherto difficult foreign exchange regulations.

**What was once considered draconian has been simplified to a great extent for the benefit of non-residents thereby making their lives considerably easier**

**FEMA (Acquisition and Transfer of Immovable Property in India) Regulations, 2000**

RBI has framed the Regulations called The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 which have been notified vide Notification No. FEMA 21/2000-RB dated 3<sup>rd</sup> May, 2000.

**Synopsis of FEMA (Acquisition and Transfer of Immovable Property in India) Regulations,  
2000**



### **Regulation 3**

1. It deals with acquisition and transfer of immovable property in India by an Indian citizen resident outside India (NRI).
2. It grants general permission to him to acquire and transfer an immovable property in India other than agricultural or plantation property or a farm house.

### **Regulation 4**

1. It deals with acquisition and transfer of immovable property in India by a Person of Indian Origin (PIO).
2. It grants general permission to him to acquire and transfer (in certain situations) an immovable property in India other than agricultural or plantation property or a farmhouse.

### **Regulation 5**

It grants general permission to a person resident outside India who has secured RBI permission to establish a branch, office or other place of business in India (excluding a liaison office) to acquire an immovable property in India which is necessary for or incidental to carrying on the permitted activity.

### **Regulation 6**

It deals with the repatriation of the sale proceeds by an NRI or a PIO, of an immovable property (other than agricultural land or plantation property or a farm house) in India subject to the satisfaction of certain stipulated conditions.

### **Regulation 7**

It prohibits the acquisition or transfer of immovable property in India by citizens of certain neighbouring countries, whether such individual is a resident of India or not.

### **Regulation 8**

It prohibits the transfer of an immovable property in India by a person resident outside India (other than

an NRI or a PIO); i.e., a foreigner, without prior permission of RBI.

Thus the Reserve Bank of India has given only three 'General Permissions' (vide regulations 3, 4 and 5) in connection with immovable property in India to the following categories of Non Residents:

1. A non-resident who is a citizen of India.
2. A non-resident who is a Person of Indian Origin. (PIO)

3. A non-resident who has established in India a branch office or other place of business (excluding a liaison) office.

In all other cases, prior permission of the RBI is required.

#### **Prohibition on citizens of certain countries**

Citizens of eight countries, (namely, Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, or Bhutan (**whether resident in India or not**)) are debarred from acquiring or transferring any immovable property in India without prior approval of the RBI. However, such a prohibition is not applicable to immovable property acquired on lease for a period not exceeding five years.

#### **General Prohibition**

Investment in agricultural property, plantation and farmhouse is prohibited for all classes of persons resident outside India, be it NRIs/OCBs/ foreign citizens or other foreign entities.

#### **Acquisition of immovable property**

Acquisition of immovable property by an NRI can be by way purchase, gift or inheritance.

#### **Transactions which require RBI's prior permission**

All transactions involving the acquisition or transfer of immovable property in India by a person residing outside India (as well as by certain persons who are citizens of certain neighbouring countries) require the prior permission of The Reserve Bank of India unless a general permission has been granted for such a transaction in terms of Regulations 3, 4 or 5. The following categories of persons are now required to obtain the prior permission of The Reserve Bank of India:

**Persons who are required to obtain**

**Matters which require RBI's**

**RBIs permission**

**permission**

**1. Citizen of India residing outside India (i.e., NRI)**

1. To acquire agricultural or plantation property or farmhouse in India- **Reg. 3(a)**

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2. To transfer agricultural or plantation property or a farm house in India to another NRI or PIO- **Reg.3(c)**
3. To transfer any immovable property in India to a person resident outside India (other than to another NRI or PIO) **Reg. 3(b) & (c)**

**2. A person of Indian Origin Resident  
outside India (PIO)**

1. To acquire any immovable property in India (other than agricultural or plantation property or a farm house) by way of a purchase from other than foreign exchange funds/Non Resident Accounts **Reg.4(a)**
2. To acquire Agricultural or Plantation Property or a Farm House in India by way of purchase or gift (other than by way of inheritance) **Reg. 4(a) & (b)**
3. To acquire any immovable property in India (other than the agricultural or Plantation property or a farm house) by way of a gift from a foreign national resident outside India (other than another NRI or PIO) **Reg.4(b)**
4. To transfer an Agricultural or Plantation property or a Farm House in India by way of a gift or sale to another NRI or PIO (other than a person who is a Citizen of India and Resident of India) **Reg.4(e)**
5. To transfer any immovable property in India by way of a

sale to a person resident outside India **Reg. 4(d)**

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| <p>6. To transfer any Residential or Commercial Property in India by way of a Gift to a person Resident outside India (other than another NRI or PIO) <b>Reg.4(f)</b></p> |
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**3. A person Resident outside who has been permitted to establish a branch, office or any other place of business in India (excluding a liaison office)**

To transfer any property in India (other than by way of a mortgage to an Authorised Dealer as a security for any borrowings) **Reg. 5 (b)**

**4. A foreign national being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan (Whether resident in India or not )**

To acquire or transfer any immovable property in India (other than a lease not exceeding 5 years) **Reg.7**

**5. Any person resident outside India (other than an NRI or a PIO), i.e., any foreign national resident outside India**

To transfer any immovable property in India Note: The regulations do not grant any general permission to such a person to acquire an immovable property in India. Therefore, such a person would also require RBI permission to acquire an immovable property in India) **Reg 8**

**6. Any non Individual Person (i.e., a company or a firm etc.) resident outside India**

To acquire or transfer an immovable property in India (other than a lease not exceeding 5 years) **Reg.6(3)(i)**

As per the liberalised policy, transactions permitted without permission of Reserve Bank of India are tabulated hereunder:

| NRI                                      |  |
|--|--|
| Type of Property                         | Acquired from                                  |
| Any immovable property other than        | Anyone including those residents outside India |
| Agricultural or plantation or farm house |  |
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**PIO**

| <b>Type</b>  | <b>Acquired from</b>        | <b>Mode</b> | <b>Condition</b>  |
|--|-----------------------------|-------------|---|
| Any immovable property other than agricultural or plantation or farm house | Anyone                      | Purchase    | To be met out of funds received in India by inward remittance by normal banking channels.                                     |
| Any immovable property other than agricultural or plantation or farm house | NRI/PIO/Resident from India | Gift        | -   |
| Any immovable property other than agricultural or plantation or farm house | NRI/Resident from India     | Inheritance | The property was acquired in accordance with the foreign exchange laws at the time of acquisition or from a resident in India |

**Acquisition by way of purchase**

A general permission is available to NRIs or PIO to purchase only residential/ commercial property in India. There is no restriction on the number of residential/commercial properties that an NRI or a PIO can buy. The name of a foreign national of non-Indian origin cannot be added as a second holder of a residential/commercial property purchased by an NRI or a PIO.

A foreign national of non-Indian origin, resident outside India, cannot acquire any immovable property in India by way of purchase without RBI's approval. However, a foreign national of non-Indian origin, including a citizen of the eight countries mentioned above, may acquire only residential accommodation on lease, for not more than five years.

He does not require the RBI's permission for this. A person resident outside India (that is, an NRI, a PIO or a foreign national of non-Indian origin) cannot acquire agricultural land/plantation/farm house in

India by way of purchase.

**Acquisition by way of gift**

|                     |   |  |  |
|---------------------|---|--|--|
| An NRI or a PIO may | acquire residential/commercial property by way of gift from a resident of India, an NRI or a PIO. However, a foreign national of non-Indian origin resident outside India cannot acquire residential/commercial property in India by way of gift. A person resident outside India cannot acquire agricultural land/plantation/farm house in India by way of gift. |  |  |
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**Acquisition by way of inheritance**

A person resident outside India can hold immovable property in India acquired by way of inheritance from a person resident in India. Further, with the approval of the RBI, he may hold immovable property in India acquired through inheritance from a person resident outside India, provided the bequeathor had acquired the property in accordance with FEMA or the foreign exchange law in force at the time of acquisition.

**Sale of immovable property**

An NRI can sell residential/commercial property in India to a person resident in India, an NRI or a PIO. However, a PIO can sell residential/commercial property in India only to a resident of India. He would need prior approval of the RBI for sale of residential/commercial property in India to an NRI or a PIO.

A foreign national of non-Indian origin whether resident in India or outside India would require prior approval of the RBI for sale of residential property in India acquired with the specific permission of the RBI to a person resident in India or outside India.

An NRI or a PIO may sell his agricultural land/plantation/ farm house in India to an Indian citizen resident in India. However, a foreign national of non-Indian origin, resident outside India, would require prior approval of the RBI to sell agricultural land/plantation/farm house acquired in India.

**As per the liberalised policy, transactions permitted without permission of Reserve Bank of India are tabulated hereunder:**

| Type  | NRI                |                   |
|---|--------------------|-------------------|
|   | Mode               | Transferred to    |
| Any property  | Sale/transfer/gift | Resident in India |
| Any property other than agricultural/plantation/farmhouse | Sale/transfer/gift | NRI/PIO           |

| Type  | PIO | Mode      | Transferred to                              |
|---|-----|-----------|---|
| Any property other than agricultural/plantation/farmhouse |     | Sale      | Resident in India                           |
| Agricultural/farmhouse/plantation property in India       |     | Gift/Sale | Resident in India who is a citizen of India |
| Any residential, commercial                               |     | Gift      | NRI, PIO or resident                        |

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property in India

**Gift of immovable property in India**

An NRI or a PIO may gift residential/commercial property in India to a person resident in India, an NRI or a PIO. Further, an NRI or a PIO may gift agricultural land/plantation/farm house in India to an Indian citizen resident in India.

However, a foreign national of non-Indian origin resident outside India would need prior approval of the RBI to gift agricultural land/plantation/ farm house acquired by him in India.

**Purchase/ Sale of immovable Property by Foreign Embassies/Diplomats/Consulate Generals**

Foreign Embassy/Diplomat/Consulate General has been allowed to purchase/ sell immovable property in India other than agricultural land/ plantation property / farm house provided

- (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and
- (ii) (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channel.

**Acquisition of immovable property for carrying on a permitted activity in India (Regulation 5)**

A person resident outside India who has established a liaison office in India in accordance with FEMA regulations cannot purchase immovable property in India. Practically, all liaison offices in India acquire premises on lease for not more than five years for which no permission is required from the RBI.

However, a person resident outside India who has established a branch office or other place of business in India in accordance with FEMA regulations can purchase immovable property in India provided it is necessary for, or incidental to, carrying on the activity he is engaged in and all applicable laws have been complied with.

Such an entity/concerned person would have to file a declaration in form IPI with the Reserve Bank, within ninety days from the date of such acquisition. The non-resident is eligible to transfer by way of mortgage the said immovable property to an Authorised Dealer as a security for any borrowing.

**IPI**  
**( See Regulation 5 )**

**Declaration of immovable property acquired in India**  
**by a person resident outside India**

**Instructions:**

The declaration should be completed in duplicate and submitted directly to the Chief General Manager, Exchange Control Department, (Foreign Investment Division - III), Reserve Bank of India, Central Office, Mumbai-400 001 within 90 days from the date of acquisition of the immovable property.

**Documentation:**

Certified copies of letter of approval from Reserve Bank obtained under section 6(6) of FEMA, 1999 (42 of 1999).

- 1 Full name and address of the acquirer who has acquired the immovable property
  
- 2 (a) Description of immovable property (a)  
  
(b) Details of its exact location stating (b) the name of the state, town and municipal/survey number, etc.
  
- 3 (a) Purpose for which the immovable (a) property has been acquired  
  
(b) Number and date of Reserve (b) Bank's permission, if any,

4 Date of acquisition of the immovable property

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|  |  |  |  |  |
|--|--|--|--|--|
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|  |  |  |  |  |
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|  |  |  |  |  |

- 5 (a) How the immovable property was (a)  
acquired i.e, whether by way of  
purchase or lease
- (b) Name, citizenship and address of (b)  
the seller/lessor
- (c) Amount of purchase price and (c)  
sources of funds.

I/We hereby declare that -

- (a) the particulars given above are true and correct to the best of my/our knowledge and belief ;
- (b) no portion of the said property has been leased/rented to, or is otherwise being allowed to be used by, any other party .

Encls:

.....  
(Signature of Authorised official)

Stamp

Place.....

Name .....

Date.....

Designation:.....

**Sale proceeds**

As far as repatriation of sale proceeds is concerned, such repatriation in respect of properties acquired by the person while being a resident of India or acquired by inheritance from a person

who is resident of India, can only be effected with the prior permission of the Reserve Bank of

|  |  |  |  |
|--|--|--|--|
| India.   |  |  |  |
| In the event of sale of properties other than agricultural land / farm house / plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the authorised dealer may allow repatriation of sale proceeds outside India subject to the condition that the immovable property was acquired by the seller in accordance with the provisions of foreign exchange law in force at the time of acquisition or the provisions of FEMA and the Foreign |  |  |  |
|  |  |  |  |

Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 and the amount to be repatriated does not exceed the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non- Resident Account or the foreign currency equivalent as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External Account for the acquisition of the property concerned. Repatriation can be made for a maximum of two residential properties.

The repatriation of sale proceeds has been restricted to US \$ 1 Million per calendar year if properties are acquired from rupee sources by way of inheritance or legacy. This repatriation can be done out of the sale proceeds received from sale of property acquired from rupee sources subject to the condition that the property should have been cumulatively held for a minimum period of 10 years. Further the repatriation is restricted to the amount of foreign exchange remitted by way of inward remittances/NR/FCNR account. However, there is no lock-in period in respect of immovable property acquired by way of inheritance/legacy.

The only significant restriction that exists is with respect to PIOs who are citizens of Pakistan, Bangladesh or Sri Lanka, China, Afghanistan or Iran. These PIOs need to obtain prior approval of the Reserve Bank of India with documentary evidence in support of inheritance and tax clearance/no objection certificate from the Income-tax authorities.

Yet another rule exists with respect to the number of residential properties that can be repatriated. In case of residential units, the restriction is two and for commercial properties, there is no limit. However, rental income is freely repatriable since it is a current account transaction.

#### **Interest or share in a Co-operative Housing Society or Apartment Owners Association**

Though the word "immovable property" has been widely used in FEMA, **nowhere** does it define the term. Further, even the definition of "immovable property" given in the Transfer of Property Act, 1982, the General Clauses Act, the Sale of Goods Act and the Indian Registration Act, taken together, do not clarify what "immovable property" is. They only suggest what is either included or not included in

"immovable property". In fact, in the above Acts, shares in the co-operative society are not so included in the definition of the term "immovable property".

However, the Supreme Court of India has made its definition clear in the case of ***Hanuman Vitamin Foods Pvt. Ltd. v/s State of Maharashtra (2000) 6 see 345***, confirming the Bombay High Court decision in Hanuman Vitamin Foods Pvt. Ltd. & Ors v/s. State of Maharashtra & Superintendent of Stamps, Bombay (Writ Petition Number 1820 of 1986, dated 17th February,





1989). The matter of contention in this case was whether the instrument of transfer of shares in a co-operative society was an instrument for transfer of an immovable property, for purposes of levy of stamp duty thereon. The Supreme Court held, by referring to another decision in ***Veena Hasmukh Jain v/s. State of Maharashtra (1999) 5 SCC 725***, that the agreement to sell shares in a Co-operative Society is, in effect, the agreement to sell immovable property.

Accordingly, any interest or share in a Co-operative Housing Society or Apartment Owners Association (also known as Condominium abroad) is an immovable property for the purposes of these Regulations.

#### **Repatriation of Rental Income**

NRI/PIOs can freely rent out their immovable property, whether purchase through application of forex or otherwise, without seeking any permission from the RBI. The rental income being a current account transaction is repatriable outside India, only if proper tax is paid or provided for.

Where the house is purchased through housing finance and if the house is rented out, the entire rental income, even if it is more than the prescribed installment, should be adjusted towards repayment of the loan. If the rental income is less than the prescribed installment, the borrower should remit the amount of the extent of the shortfall from abroad or pay it out of his NRE, FCNR or NRO account in India (Refer Master Circular Misc. Remittance dated 1.7.2003 - RBI).

#### **Refund of Purchase consideration on account of non--allotment of flats/plots/cancellation of booking/deals in respect of immovable property purchased by NRIs/PIOs in India**

Authorised Dealers are permitted to credit refund of application/earnest money/purchase consideration made by the housing building agencies/seller on account of non-allotment of flat/plot cancellation of bookings/deals for purchases of residential, commercial property, together with interest, if any (net of income tax payable thereon), to NRE/FCNR account, of Non--Resident Indian/Persons of Indian Origin provided, the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and



the authorised dealer is satisfied about the genuineness of the transactions (refer to A.P. (DIR Series) Circular No.46 dated November 12, 2002).

**Loans for acquisition of immovable property**

Reserve Bank has granted general permission to certain financial institutions providing housing finance e.g. HDFC, LIC Housing Finance Ltd., etc., to grant housing loans to NRIs for acquisition of a house/flat for self occupation subject to certain conditions. The purpose of loan margin

money and the quantum of loan will be at par with those applicable to housing loans to residents. Repayment of loan should be made within a period not exceeding 15 years out of inward remittances or out of funds held in the investor's NRE / FCNR / NRO Accounts.

Apart from housing finance institutions, authorised dealers have also been granted permission to grant housing loans to NRIs for acquisition of a house/flat for self occupation subject to the same conditions as housing finance institutions.

Authorized dealers can also grant housing loan to NRIs where he is a principal borrower with his resident close relative as a co-applicant / guarantor or where the land is owned jointly by such NRI borrower with his resident close relative. Such housing loans availed in rupees can also be repaid by the close relatives of the borrower in India (Please refer to Regulation 8 of Notification No.FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR. Series) Circular No.95 dated April 20, 2003 and A.P. (DIR Series) Circular No.94 dated May 25, 2003).

#### **Loan against the security of immovable property**

An NRI can borrow against the security of immovable property from Authorised Dealer subject to following conditions:

- i) The loan should be used for meeting the personal requirements or for borrower's own business purposes; and
- ii) Loan should not be used for prohibited activities, namely;
  - (a) Business of chit fund, or
  - (b) Nidhi Company, or
  - (c) Agriculture or plantation activities or in real estate business, or construction of farm houses, or

(d) Trading in Transferable Development Rights (TDRs),

iii) The loan amount cannot be remitted outside India,

iv) Repayment of loan shall be made from out of remittances from abroad or by debit to NRE/FCNR/NRO account or out of the sale proceeds of shares or securities or immovable

property against which such loan was granted. (Please refer to Schedules 1 and Schedules 2 to Notification No.FEMA 5/2000-RBI dated May 3, 2000)

#### **Availing housing loan in rupees from the employer**

A NRI can avail housing loan in rupees from his employer subject to the terms and conditions mentioned in Regulation 8A of Notification No.FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR Series) Circular No.27 dated October 10, 2003.

#### **Investment in Housing and Real Estate Development (10C. 13 of Exchange Control Manual)**

RBI has given permission to NRIs/OCBs to invest on repatriable basis upto 100% in the new issues of equity shares/convertible debentures by an existing or new company engaged or proposing to engage in the following activities:

- Development of service plots and construction of built- up residential premises;
- Real estate covering construction of residential and commercial premises including business centres and offices;
- Development of townships; City and regional level urban infrastructure facilities, including roads and bridges;
- Manufacturing of building materials; and Financing of housing development.

Repatriation of original investment will be permitted after a lock in period of three years from the date of issue of the equity shares/convertible debentures. Annual dividend on equity shares/interest on debentures can, however, be freely repatriated, subject to payment of applicable taxes. In case of OCBs, net profit (upto 16%) arising from the sale of such investment after the lock-in period of three years can also be repatriated. The RBI permission is not required for acquiring/ holding or transfer/disposal of immovable properties by Indian citizens' resident outside India. Indian citizens holding immovable property in India but who acquire foreign citizenship at a later date are required to take permission from the RBI for continuing to hold the immovable properties.

The facilities are granted to OCBs so long as the ownership/beneficial interest held in them by persons of Indian nationality/origin resident outside India continues to be at least 60 per cent. To ensure this, the OCBs have to furnish a certificate from an overseas auditor/chartered accountant/certified public accountant in form OAC/OAC-1, at the time of applying for the facility for the first time and thereafter as and when required by Reserve Bank/authorised dealers. The overseas auditor/chartered account/certified public accountant has to certify that the ownership interest in the OCBs is held by NRIs. The documentation accompanying Form OAC/OAC-1 have to clarify that the interest held by persons of Indian nationality/origin in the OCB is actually held by

such persons and is not held by them in the capacity as nominees.

### **Power of Attorney and NRI**

The non-resident Indians who are staying abroad may enter into an agreement through their relatives and/or by executing the Power of Attorney in their favour as it is not possible for them to be present for completing the formalities of purchase (negotiating with the builder or Developer, drafting and signing of agreements, taking possession, etc.) These formalities can be completed through some known person who can be given the Power of Attorney for this purpose. Power of Attorney should be executed on the stamp paper before the proper authorities in foreign countries. Power of Attorney cannot be drafted on the stamp paper bought in India.

Section 1-A of Power of Attorney Act, 1882 defines power of Attorney as "power of Attorney includes any instrument empowering a specified person to act for and in the name of the person executing it".

**Meaning of POA:** A Power of attorney is an authority given by way of a formal instrument whereby one person, who is called the donor or principal, authorises another person, who is called the donee, attorney or agent, to act on his behalf.

A Power of Attorney can be issued for the following reasons in the case of a real estate transaction:

1. To execute all contracts, deeds, bonds, mortgages, notes, checks, drafts, money orders,
2. To lease, collect rents, grant, bargain, sell, or borrow and mortgage
3. To manage, compromise, settle, and adjust all matters pertaining to real estate.

### **Types of Power Of Attorney**

Every act performed by your agent within the authority of the Power of Attorney is legally binding upon the persons granting it. A power of attorney should be given only to a trustworthy person, and only when absolutely necessary. The person who empowers is the Principal and the person to whom the power is conferred is the Agent.



There are two types of power of attorney; "general" and "special" (or limited).

**A general power of attorney:**

The principal empowers the agent with the right to carry out all legal acts on his behalf without restricting it to a particular transaction or act and gives the agent very broad powers to act on behalf of the Principal.



**A special power of attorney:**

The authority is restricted to act only on certain matters or only a particular kind of transaction or to carry out a specific legal transaction for the Principal. The agent's power of attorney expires on the completion of the transaction.

**Revocation of Power of Attorney**

Power of Attorney can be revoked or would stand revoked if:

1. Revoked by the principal himself
2. The principal dies or becomes insane or becomes bankrupt
3. The business for which the agent was appointed is over
4. Mutually agreed upon by the principal and agent
5. The right under the power of attorney is renounced by the agent

**Registration of Power-of-Attorney**

1. Registration of power of attorney is not compulsory, it is optional.
2. In India, where the Registration Act, 1908, is in force, the Power of Attorney should be authenticated by a Sub Registrar only, (Whenever a person signs the document and his attorney presents/ admits execution).
3. In other areas, attestation should be by a Notary or diplomatic agents.
4. In case an attorney under a valid Power of Attorney himself signs a document, he may, as an executing or (signing) party present/admit execution of a document though it is attested by a Notary, unless the text of the power specifically excludes such powers
5. Foreign Power of Attorney should be got stamped by the Collector after its receipt in India within prescribed time of 3 months.
6. Registration of power of attorney authenticates the deed of power of attorney.
7. Power of Attorney shall be attested by two or more adult independent witnesses who are of sound mind.
8. If a power of attorney is in respect of an immovable property of value more than Rs100 it must be registered.

### **Power of Attorney for Home Loans**

Power of Attorney is an important document required by HFCs/Banks while processing home loans for NRIs. Since the NRIs are not based in India, the banks/HFCs need a representative 'in lieu of the NRI' to deal with. Generally, an NRI appoints his parents/brother/sister/wife/children as his representative through POA.

### **Power of Attorney for selling property**

A person staying abroad can also sell his land in India by giving a Power of Attorney to a third person authorizing him the right to sell the land on his behalf. But in such cases, the power of attorney should be witnessed and duly signed by an officer in the Indian embassy in his province. There is no legal support for Power of attorney signed by a notary public.

#### **Provisions regarding PAN**

As per Rule 114B(a) of the Indian Income Tax Rules 1962, a person has to quote his PAN in all documents for the sale or purchase of any immovable property valued at Rs 5,00,000 or more. But as per Rule 114C of the rules, an NRI need not apply for and obtain PAN for any transaction regarding the sale or purchase of immovable property.

The non-residents who are filing the Return of Income may be allotted PAN by the Assessing Officer under section 139A (2) of the Income-tax Act. However, if PAN is not allotted he should apply to obtain P.A.N.

The non-residents are exempt from obtaining the PAN under section 139 A (8) (d) of the Incometax Act. It is advisable to obtain PAN by non-residents who are filing the Return of Income. For others, they may apply for it for the sake of convenience.

Also, procedurally the Income-tax department is not accepting the Returns of Income from any person who has not obtained or applied for PAN. Hence, one may submit PAN application along with his Return of Income.

#### **Wealth Tax Planning**

Wealth tax is payable only on non-productive assets, like motor cars, farmhouses, vacant land, jewellery, etc., over and above the minimum exemption limit of Rs. 15 lakh. Thus, it is possible to not pay any wealth tax at all even after possessing assets of crores of rupees; as long as one's non-productive assets do not surpass Rs. 15 lakh. Other than that, a taxpayer may own unrestrained value of shares, bank deposits, units, commercial property, industrial property, etc.

without paying any wealth tax.

No wealth tax is payable on his foreign assets and the tax is payable on net taxable wealth which is arrived at after deducting the debts and liabilities related to the taxable assets. The items of wealth which are either totally exempt from wealth tax and or which are so exempt from wealth tax up to a particular limit are deducted from the gross wealth to arrive at the taxable wealth on the valuation date. Generally speaking, the value of assets on the valuation date as per PART B III Schedule to the Wealth Tax Act is taken for the purpose of computation of wealth tax payable

by a non-resident individual. Hence, a non-resident should so plan his investments in India that he secures the maximum deductions and exemptions in a manner that he is liable to least possible wealth tax.

Broadly speaking the exemption in respect of wealth tax could be classified under two headings, namely:

(i) Items which are excluded from the definition of “Assets” [as per the definition of “assets” given in Section 2 (e a) of the Wealth Tax Act, 1957].

(ii) Specific exemptions regarding certain other assets [Section 5 of the Wealth Tax Act, 1957]

#### **Wealth Tax Exemptions**

In case of NRIs having any of the following assets, the same are not taxable in the hands of NRI under Section 5 of the Wealth Tax Act, 1957

- (i) One house property or
- (ii) One plot of land provided area is less than 500 square meters or less.

In addition to the above, **OVERSEAS ASSETS** held by NRI is also exempt Under Section 6 of Wealth Tax Act, 1957.

#### **Specific exemption for an NRI returning India**

Where an NRI/PIO returns to India for permanent residence, the money and the value of assets brought by him into India and the value of assets acquired by him out of such money within one year immediately preceding the date of his return and at any time thereafter are totally exempt from wealth tax for a period of seven years after return to India.

**The liability of a non-resident Indian to wealth tax in India is explained by way of the following two examples:**

#### **Example 1**

Amit, a non-resident Indian, has bought urban land and jewellery worth Rs. 20 lakh. He has Rs. 40 lakh in bank deposit and other bank accounts, as on 31 March 2006. The wealth tax payable by

Amit on the net wealth as on the valuation date of 31 March 2006 relevant to the assessment year 2006-2007 will be computed only on Rs. 20 lakh - Rs. 15 lakh (exempted), i.e. on Rs. 5 lakh as the amount of Rs. 40 lakh, being deposits in bank is exempt. The wealth tax is computed @ 1% on Rs. 5 lakh = Rs. 5,000.

**Example 2**

Charu, a non-resident Indian and a citizen of India has the following investments in India as on 31 March 2006:

|   | Rs.      |
|---|----------|
| (a) House property on rent for 250 days | 4,00,000 |
| (b) Shares in Indian companies          | 7,00,000 |
| (c) 8% Relief Bonds                     | 8,00,000 |
| (d) Jewellery and cash in hand          | 9,00,000 |

The net wealth liable to wealth tax in India of Charu, a non-resident Indian will first be computed as: Jewellery and cash in hand & rented house property Rs. 13,00,000. The other items of wealth are completely exempt from wealth tax.

### **Wealth Tax Rates**

In case of NRIs, Wealth Tax is leviable at par with resident.

The Tax rate is 1% of net wealth subject to basic exemption of Rs. 15,00,000/- (Rupees Fifteen Lakhs).

### **Capital Gains on Transfer of Immovable Property**

The profit on sale of capital asset is treated as capital gains. The capital assets (which are not held as stock-in-trade) are Shares, Debentures, Government securities, Bonds, Units of UTI and Mutual Funds, Immovable property etc.

The capital gains are segregated into long-term capital gains and short- term capital gains in following manner: -

| <b>Capital Asset</b>   | i | able property. |
|--|---|----------------|
| Equity shares, and listed securities ,Units of Unit Trust of India or Mutual Funds | m |                |
| All other investments and  | v |                |

**Short-term**

If held for a period not exceeding 12 months from the date of acquisition.

If held for a period not exceeding 36 months from the date of acquisition.

**Long-term**

Capital  
asset  
which is  
not a  
short-term capital  
asset is  
long-term  
capital  
asset  
Capital  
asset  
which is  
not a  
short-term capital  
asset is  
long-term  
capital  
asset

**Computation of Capital Gains on transfer of Immovable Property is done for**

- (i) Long term capital gains- Immovable Property held for > 3 years
- (ii) Short term capital gains- Immovable Property held for < 3 years
- (iii) Profit on sale of residential property



**The mode of Computing Capital Gains is as under:**

|  | <u>Rs.</u>         |
|--|--------------------|
| SALE PROCEEDS OF ASSETS  | XXXX               |
| LESS: COST OF ACQUISITION OF ASSET/<br>INDEXED COST OF ACQUISITION | <u>XXX</u>         |
| <b>CAPITAL GAINS</b>   | <b><u>XXXX</u></b> |

**Note:**

1. Cost of acquisition:

Cost of acquisition in case of long term capital assets other than Specified Assets means Indexed Cost of Acquisition.

2. Indexed Cost of Acquisition:

For long term capital assets other than Debentures and Bonds (except capital index bonds issued by the Government), the Cost of acquisition means Indexed Cost of Acquisition. The system helps you to claim higher cost than actual cost of acquisition. The term "indexed cost of acquisition" is the amount which bears, to the cost of acquisition, the same proportion as cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the first year in which the asset was held by the assessee or for the year beginning on April 1, 1981, whichever is later.

**(i) Long Term Capital Gains - Immovable Property held for more than 3 years**

This section deals with

1. Long Term Capital Gain i.e., assets held for more than 36 months and in case of shares and securities more than 12 months.
2. It applies to all Immoveable properties and other assets.
3. Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.
4. Long Term Capital Gain shall be computed by considering Indexed cost of acquisition



and Indexed cost of Improvement.

**EXAMPLE**

**(A) Capital Gain on Sale of Immovable property purchased after April 1, 1981.**

1. Purchase/sale of Plot of Land / Residential House or any other immoveable property

2. Purchase cost Rs. 2,00,000/- in April - 1982  
( financial year 1982 - 83).

(Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)

3. Sale Price Rs.9,50,000/- in February, 2004.(financial year 2003-04).

|  | Rs.      |
|--|----------|
|  | -----    |
| Sale Proceeds                              | 9,50,000 |
| Less :- <u>Indexed Cost of acquisition</u> |          |
| <u>Indexed cost of acquisition</u>         | 8,49,541 |
| 2,00,000 x 463 <sup>&gt;</sup>             |          |
| -----                                      |          |
| 109 <sup>@</sup>                           |          |

Cost of acquisition/purchase

<sup>></sup> being cost inflation index of the financial year 2003-04

<sup>@</sup> being cost inflation index of the financial year 1982-83

|                               |                            |                 |
|-------------------------------|----------------------------|-----------------|
| <b>LONG TERM CAPITAL GAIN</b> | <b>(Sale proceeds Less</b> | <b>1,00,459</b> |
| <b>Indexed Cost)</b>          |                            |                 |

=====

**(B) Capital Gain on Sale of Immoveable property purchased before April 1, 1981.**

1. Purchase/sale of Plot of Land / Residential House or any other immoveable property
2. Purchase cost Rs. 1,00,000 in April - 1970 (i.e. financial year 1970 - 71).

(Purchase cost Includes Stamp paper Expenses Advocate fees,

Registration Charges etc)

3. Sale Price Rs.9,50,000/- in December,2003 (Financial year 2003-04)
4. Fair market value as on April 1, 1981 Rs. 2,00,000/- (as certified by valuation officer) being substituted for cost of acquisition.

Rs.

|                                    |          |
|------------------------------------|----------|
|                                    | -----    |
| Sale Proceeds                      | 9,50,000 |
| Less :- <u>cost of acquisition</u> |          |
| Indexed cost of acquisition:       | 9,26,000 |
| 2,00,000 x 463'                    |          |
| -----                              |          |
| 100 <sup>f</sup>                   |          |

being fair market value as on April 1, 1981.  
, being cost inflation index of the financial year 2003-2004  
*f* being cost inflation index of the financial year 1981-82

|  |               |
|--|---------------|
|  | -----         |
| <b>LONG TERM CAPITAL GAIN (Sale proceeds-indexed cost)</b> | <b>24,000</b> |
|  | =====         |

**(ii) Short term Capital Gains-Immovable Property held for less than 3 years**

This section deals with

1. Short Term Capital Gain i.e., gain arises from assets held for not more than 3 years.
2. It applies to all short term assets except shares and debentures of Indian Company. For shares and debentures holding period is not more than 12 months.
3. Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.
4. In this case, benefit of Indexation is not available.

**EXAMPLE**

**Short Term Capital Gain on Sale of Immoveable property or any other Short Term Capital Asset.**

1. Purchase/sale of Plot of Land / Residential House or any other immovable property
2. Purchase cost Rs. 2,00,000/- in May - 2003 ( financial year 2003- 04).



(Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)

3. Sale Price Rs.4,50,000/- in April, 2004. (financial year 2004-05).

|               | Rs.      |
|---------------|----------|
|               | -----    |
| Sale Proceeds | 4,50,000 |

|                                    |                                  |
|------------------------------------|----------------------------------|
| Less :- <u>Cost of acquisition</u> | 2,00,000                         |
|                                    | -----                            |
| <b>SHORT TERM CAPITAL GAIN</b>     | <b>(Sale Proceeds Less cost)</b> |
|                                    | <b>2,50,000</b>                  |
|                                    | =====                            |

**Exemptions available on re-investment**

NRIs are entitled to claim exemption from capital gains tax if they reinvests (within 6 months of sale) long-term capital gains into following assets:

- (i) Residential house property [Section 54F of the Income Tax Act, 1961]
- (ii) Bonds of National Bank for Agricultural and Rural Development (NABARD) / National Highway Authority of India (NHAI)/ Rural Electrification Corporation Limited (RECL)/National Housing Bank (NHB)/Small Industries Development Bank of India (SIDBI) (in case of sale of any long term capital asset) -[Section 54EC of the Income Tax Act, 1961]
- (iii) Eligible public issues of equity shares by Indian companies (in case of sale of listed securities) [Section 54ED of the Income Tax Act, 1961]. With effect from 1<sup>st</sup> April 2007, the Finance Act 2006 has made this Section applicable to only those capital gains wherein the transfer of capital asset happens before the 1<sup>st</sup> of April 2006.

**EXAMPLE :-**

**(A) Capital Gain on Sale of Immoveable property purchased after April 1, 1981.**

1. Purchase/sale of Plot of Land / Residential House or any other immoveable property.
2. Purchase cost Rs. 2,00,000/- in April - 1982 ( financial year 1982 - 83).  
(Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)
3. Sale Price Rs.9,50,000/- in February, 2004. (financial year 2003-04).
4. Amount Invested in Specified Bonds Rs.1,90,000/-.

Rs.

|  |       |          |
|--|-------|----------|
| Sale Proceeds                              | ----- | 9,50,000 |
| Less :- <u>Indexed Cost of acquisition</u> |       |          |
| <u>Indexed cost of acquisition</u>         |       | 8,49,541 |
| 2,00,000 x 463                             |       |          |
| -----                                      |       |          |



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|  |                            |                 |
|--|----------------------------|-----------------|
| Cost of acquisition/purchase<br>being cost inflation index of the financial year 2003-2004<br>being cost inflation index of the financial year 1982-83 |                            | -----           |
| <b>LONG TERM CAPITAL GAIN</b>  | <b>(Sale Proceeds Less</b> | <b>1,00,459</b> |
| <b>Indexed cost)</b>   |                            | <b>=====</b>    |

**EXEMPTION .**

|   |                               |              |
|---|-------------------------------|--------------|
| Long Term Capital Gain (As above)                         |                               | 1,00,459     |
| Less :- <u>Exemption</u>                                  |                               |              |
| being Amount Invested in Specified Bonds within 6 months. |                               | 1,90,000     |
|   |                               | -----        |
|   | <b>LONG TERM CAPITAL GAIN</b> | <b>NIL</b>   |
|   |                               | <b>=====</b> |

EXAMPLE :-

**(B) CAPITAL GAIN ON SALE OF IMMOVEABLE PROPERTY PURCHASED AFTER APRIL 1, 1981.**

1. Purchase/sale of Plot of Land / Residential House or any other immoveable property.
2. Purchase cost Rs. 2,00,000/- in April - 1982 ( financial year 1982 - 83).  
(Purchase cost Includes Stamp paper Expenses, Advocate fees, Registration Charges etc.)
3. Sale Price Rs.9,50,000/- in February, 2004. (financial year 2003-04).



4. Amount Invested in Specified Bonds Rs. 95,000/-

|  | Rs.      |
|--|----------|
|  | -----    |
| Sale Proceeds                              | 9,50,000 |
| Less :- <u>Indexed Cost of acquisition</u> |          |
| <u>Indexed cost of acquisition</u>         | 8,49,541 |

2,00,000 x 463

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Cost of acquisition/purchase  
being cost inflation index of the financial year 2003-2004  
being cost inflation index of the financial year 1982-83

|                               |                            |                 |
|-------------------------------|----------------------------|-----------------|
| <b>LONG TERM CAPITAL GAIN</b> | <b>(Sale Proceeds Less</b> | <b>1,00,459</b> |
| <b>Indexed cost)</b>          |                            | -----           |
|                               |                            | =====           |

**EXEMPTION .**

|   |          |
|---|----------|
| Long Term Capital Gain (As above)                         | 1,00,459 |
| Less :- <u>Exemption .</u>                                |          |
| being Amount Invested in Specified Bonds within 6 months. | 95,000   |

|                               |              |
|-------------------------------|--------------|
| <b>LONG TERM CAPITAL GAIN</b> | <b>5,459</b> |
|                               | -----        |
|                               | =====        |

These exemptions are limited to the Investment made in specified assets, provided the same are held for more than 36 months from the date of acquisition.

**Specified Asset means any bond**

- (i) By the National Bank for Agriculture and Rural Development (NABARD) or by the



National Highway Authority of India or

(ii) By the Rural Electrification Corporation Ltd or

(iii) By the National Housing Bank or by the Small Industries Development Bank of India.

**(iii) Profit on sale of residential property**

Long Term Capital Gain arising on sale of residential property and exemption in case of purchase of New Residential House from the sale proceeds of Residential property sold, is dealt by Section 54 of the Income - Tax Act, 1961.

This section deals with.

1. Long Term Capital Gain i.e., assets held for more than 36 months.
2. It applies to residential property only.
3. Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.
4. Long Term Capital Gain shall be computed by considering Indexed cost of acquisition and Indexed cost of Improvement.
5. Resident as well as NRI is eligible for exemption from tax on Long Term Capital Gain provided
  - (i) He has purchased or constructed a residential house within specified period, and
  - (ii) He will not sell new residential house for a period of 3 years from the date of its purchase or construction.

**OR**

- (i) If he deposits the funds before due date of furnishing the return of Income into **CAPITAL GAINS ACCOUNTS SCHEME 1988** and
  - (ii) Utilized the said deposits for purchase or construction of new residential house within the specified period.
- 6 Amount of exemption - lower of the following
  - a) The amount of capital gain generated on transfer of residential house property; or
  - b) The amount invested in purchasing or construction (including the amount deposited in the deposit scheme) new residential property.
- 7 Specified Period in this case means one year before or two years after the date on which the transfer took place or within a period of three years from the date of its construction.

#### **Set-Off Of Gains against Losses**

When NRI has incurred loss on sale of shares and later when he sells other shares where he has capital gains, in such a case the NRI is eligible to claim set off provided both the transactions are in the same year i.e. during April- March financial year. In this case, NRI can apply for tax exemption certificate prior to the sale of shares of second lot where he has capital gains to ensure set - off and Nil or lower deduction of tax.

**Gift Tax Act, 1958**

Under the Gift Tax Act, 1958, gift tax was payable by the donor upto 30<sup>th</sup> September, 1998. The Gift Tax Act has been repealed with effect from 1<sup>st</sup> October, 1998 and therefore the Gift Tax is not chargeable for the gifts made on or after 1st October, 1998. Gifts by an NRI out of amount standing to his credit in NRE account or gifts made by him to relatives, in convertible foreign exchange, or gifts of specified savings certificates and securities or of foreign exchange asset is not taxable. The gift can therefore be freely given by NRIs to residents, but they must be genuine and by an NRI who has capacity to give such gifts. There are no gift tax implications on the

transfer of real estate. However, after the implementation of the Finance Act 2004 any gift to a person who is not a relative as defined by the Income Tax Act would be taxable as income of the recipient on the market value of the gift. The relatives as defined under the Income Tax Act would not be liable to such income tax.

#### **Transfer of Property Act, 1882**

"Transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

#### **What can be transferred?**

Property of any kind can be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

- (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a similar nature, cannot be transferred.
- (b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.
- (c) An easement cannot be transferred apart from the dominant heritage.
- (d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.
- (dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.
- (e) A mere right to sue cannot be transferred.
- (f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.
- (g) Stipends allowed to military, naval, air-force and civil pensioners of the government and political pensions cannot be transferred.
- (h) No transfer can be made
  - (1) In so far as it is opposed to the nature of the interest affected thereby, or
  - (2) For an unlawful object or consideration within the meaning of section 23 of the Indian



Contract Act, 1872 (9 of 1872), or

(3) To a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.



### **Persons competent to transfer**

Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

### **Mode of transfer**

Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Such incidents include, when the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where the property is machinery attached to the earth, the movable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith; and, where the property is a debtor other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

### **Oral transfer**

A transfer of property may be made without writing in every case in which writing is not expressly required by law.

### **Condition restraining transfer**

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

PROVIDED that property may be transferred to or for the benefit of a women (not being a Hindu, Muslim or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

**Restriction incompatible with interest created**

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a

particular manner; he shall be entitled to receive and dispose of such interest as if there were no such direction. Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

#### **Filing Return of Income**

The filing of Return of Income (ROI) by NRIs is explained as under: -

- (i) The ROI for Income earned during any April-March period is required to be filed by subsequent July (i.e. for April' 2006-March' 2007 income, you are required to file the ROI by 31st July '2007) provided the Income chargeable to tax exceeds Rs. 100000 being the maximum amount not chargeable to tax for the Financial Year April 2006 to March 2007, unless one is covered by clause (ii) below.
- (ii) NRI is not required to file the Return of Income if he has income only from Specified Assets as defined under section 115C of the Income-tax Act, such as dividends, Interest from Debentures/Deposits from public limited companies, Long Term Capital Gains on sale of shares an Indian company and the tax is deducted at source from the Income as per the provisions of Income-tax Act.
- (iii) The tax deduction at source for NRI is prescribed at maximum rate in the Income-tax Act. However, the actual liability to tax for the year computed in accordance with the provisions of the Act is generally lower for following reasons:
- (iv) Income up to Rs. 100,000 (other than long-term capital gains) earned by NRI is not liable to taxation. However, the tax is deducted at source when Income is received. The Income earned may not be liable to tax but the tax is deducted by the Payer in following cases.

- (a) The Capital Losses can be set off against Capital Gains but tax is deducted at source from capital gains without setting off the losses.
  
- (b) The rate of TDS on investment income is 20% (for Assessment year: 2007-2008 i.e. Previous year: 2006-2007) but tax chargeable on Income as per Double Taxation Avoidance Agreements (DTAA) existing with the country where NRI resides may be lower.

- (c) The reinvestments of capital gains as prescribed may exempt it from tax but nevertheless the tax is deducted from Capital gains.
- (v) In view of above, NRI should file Return of Income if his tax deducted at source is more than his actual tax liability. He is entitled to claim refund of tax with interest at 8% p.a.
- (vi) Sometimes, NRI may incur capital loss on his investments. He can set off such loss against any capital gain from sale of investments in subsequent year or years provided he has filed Return of Income within prescribed time for the year in which he has incurred loss. Hence the NRI should file Return of Income declaring loss in such a situation.
- (vii) NRI may file Return of Income in some years and may not file in some years. But if he receives a notice from the Tax department to file the return of Income, he must respond by filing Return of Income.
- (viii) Under the provisions of section 139(1) it is obligatory, for an individual, who satisfies the conditions (i.e. economic criteria) specified therein, to file the Return of Income even though he may not have taxable income. However, NRIs, vide Notification No.S.O.710 (E) date 20-8-98, are exempt from filing the Returns of Income based on economic criteria.
- (ix) If Return is not filed within time allowed, you may file Return of that year, at any time within 24 months from the end of that year.

**Interest / Penalties for belated return:**

If Return is not filed in time/ filed after the due date:-

- (i) The assessee is liable for penal interest @ 1.25% per month or part of the month on

tax amount being Tax payable on Total Income Less Tax Deducted at Source.

- (ii) Penalty of Rs.5000 if filed after the end of the assessment year.
- (iii) Benefit of carry forward of losses for set-off against income in later years lapses.

In case of an Individual the form for filing the Return of Income is SARAL 2D, SARAL 2 & SARAL 3. The form is to be signed and verified, by the individual himself or by some person duly

authorised by him. Such person should hold a valid Power of Attorney which should be attached to the Return.

#### **Recovery of tax in respect of non-residents**

Without prejudice to the provisions of sub-section (1) of Section 161 or of Section 167, where the person entitled to the income referred to in clause (i) of sub-section (1) of Section 9 (Incomes deemed to accrue or arise in India), the tax payable thereon, whether in his name or in the name of his agent who is liable as representative assessee, may be recovered by deduction under any of the provisions of Chapter XVII-B and any arrears of tax may also be recovered in accordance with the provisions of this Act from any assets of the non-resident which are, or may at any time, come within India.

#### **Certificate for deduction at lower rate or Tax Exemption Certificate**

Section 197 of the Income Tax Act, 1961 provides for deduction of tax at lower rates in certain cases. The rate prescribed for TDS from NRI's income is the maximum rate of tax at which relevant Income is taxable in India. However, in majority of the cases of NRI, the actual tax liability is lower than this. However, the higher deduction of tax so made is generally not claimed as refund by filing Return of Income. In order to assist such situation, the Income-tax Act has provided procedure under section 197 whereby a NRI can apply to the Assessing officer (in prescribed form) to issue specific certificate authorizing the payer of income (who normally deducts tax at highest prescribed rate) to deduct tax at a lower rate or nil rate. The NRI should estimate his income, tax liability and likely TDS and then apply for partial or complete Tax Exemption Certificate. The payer shall deduct tax in accordance with the certificate of the Assessing officer. Normally the Exemption Certificate is issued within 30 Days and it is issued for a period of one year. After obtaining the Exemption Certificate, the NRI needs to submit it to the Payer of the income who will follow the certificate and not deduct the tax or may deduct at a lower rate as given.

#### **Tax Clearance Certificate**

Section 230 of the Income Tax Act, 1956 deals with the provisions of tax clearance certificate. The following categories of persons are required to produce a tax clearance certificate from the concerned assessing officer prior to their departure:-

1. Persons who are not domiciled in India, and in whose case the stay in India has exceeded 120 days;
2. Persons of Indian or non-Indian domicile whose names have been communicated to the Airlines/Shipping Companies by the Income Tax authorities;



3. Persons who are domiciled in India at the time of their departure; but
  - i. Intend to leave India as emigrants; or
  - ii. Intend to proceed to another country on a work permit with the object of taking any employment or other occupation in that country; or
  - iii. In respect of whom circumstances exist, which in the opinion of the Income Tax Authorities render it necessary for him to obtain the Tax Clearance Certificate.

Such certificates is granted where there are no outstanding taxes under the Income Tax Act, the Excess Profits Tax Act, the Business Profits Tax Act, the Wealth Tax Act, the Expenditure Tax Act or the Gift Tax Act against him or where satisfactory arrangements have been made for the payment of any such taxes. Obtaining guarantee from the employer of the person leaving the country is one of the methods of ensuring satisfactory arrangement for payment of taxes. For those who have to go abroad frequently for employer's work, facility of one-time Clearance Certificate has been provided to the foreign employee who has a fixed tenure of service in India or upto 5 years on furnishing an employer's guarantee in the prescribed form for payment of any tax that may be found due against him during the entire period of contract plus two years.

### **Tax Concessions to NRIs**

#### **Basis of Tax Liability in India**

The tax liability of a person under the Income Tax Act depends on the residential status in the financial year (1<sup>st</sup> April to 31<sup>st</sup> March) in which the income accrues or arises to him or is received by him.

For income tax purposes the residential status of an individual generally depends on his physical presence or stay in India and not on his nationality or domicile.

#### **(1) Resident**

An individual is said to be a 'resident' in India in any financial year if he has been in India during that

year:

- (i) for a period of 182 days or more; or
- (ii) for a period of periods of 60 days or more and has also been in India within the preceding four years for a period or periods of 365 days or more;

However, the period of 60 days is increased to 182 days in the case of:

- (i) a citizen of India or person of Indian origin who has been outside India and comes on a visit;
- (ii) when a citizen of India leaves India for purpose of employment outside India or as a member of a crew of an Indian ship.

### **(2) Resident But not Ordinarily Resident**

An individual is said to be 'not ordinarily resident' in any financial year, if:

- (i) he has not been resident in India in nine out of ten financial years preceding that financial year; or
- (ii) has not during the seven financial years preceding that year, been in India for a period of periods of 730 days or more.

An individual would be "not ordinarily resident" if he fulfills either of the above conditions.

A Hindu Undivided Family is said to be 'not ordinarily resident' in India if its manager is 'not ordinarily resident' in India. For calculating the length of the manager's stay in India, periods of stay in India of successive managers of a Hindu Undivided Family have to be added up.

The status of 'resident but not ordinarily resident' is available only to individuals and Hindu Undivided Families.

### **(3) Non Resident**

A person who is not resident in India is a 'Non Resident'.

### **Extent of Tax Liability**

Based on the residential status of a tax payer and the place where the income is earned, the income that is included in the total income is as under:-



**Residential Status**

**Nature of Income**

Resident

All incomes whether earned in India or outside India

Not Ordinarily Resident

All incomes:

(a) earned in India, and

(b) all incomes earned outside India if the same is derived from a business which is controlled in India or from a profession which is set up in India.

Non Resident

All incomes earned in India

### **Double Taxation Avoidance**

Since a resident is liable to pay tax in India on his 'total world income', it is possible that he may have to pay tax on his foreign income in that country also. To avoid such a situation the Government of India has entered into agreements for avoidance of 'double taxation' with different countries.

### **Special Provisions Applicable to NRIs**

With a view to attract investment by Non Resident Indians (NRIs), certain relief, exemptions and incentives have been provided.

For Income Tax purposes, a Non Resident Indian has been defined as an individual being a citizen of India or a person of Indian origin who is not a resident. A person is considered to be of Indian Origin if he or either of his parents or his grand parents was born in undivided India.

### **20% Tax Scheme**

Income from foreign exchange assets (any specified asset which the assessee has acquired or purchased or subscribed to in convertible foreign exchange) comprising of shares/debentures/deposits with Indian companies. Central Government securities or any other notified assets subscribed to or purchased in convertible foreign exchange can be charged at a flat rate of 20%.

No deduction, basic exemptions etc. will be available under the 20% scheme.



### **Long Term Capital Gains**

Long term capital gains on specified foreign exchange assets such as Units/Bonds/shares and listed securities as specified by the Government held by NRIs are taxable @ 10%.

Minimum holding period for allowing this rate is one year for shares and other securities listed in stock exchanges in India and units of specified mutual funds. For other assets the minimum holding period is 36 months.

If the proceeds are reinvested within six months of such transfer in any specified securities and new assets are retained for 3 years, the proceeds are exempted from payment of Income Tax.

Income from units of UTI are totally exempted from payment of Income Tax.

### **Tax Exemptions**

Income from following investments made by NRIs out of convertible foreign exchange is totally exempt from income tax.

- (a) NRE and FCNR(B) Accounts;
- (b) Units of UTI;
- (c) Specified Securities, Bonds, Savings Certificates.

The above exemptions will cease immediately on NRI becoming resident.

Where the NRI has income from only foreign exchange assets or income by way of long term capital gains from foreign exchange assets or both, and tax deductible at source from such income has been deducted he is not required to file return of income as otherwise required under the Income Tax Act.

The special provisions in relation to investment income from foreign exchange assets (other than shares of an Indian company) will continue, even after the NRI becomes resident till transfer or conversions of such assets into money, if the NRI so wishes.

### **Advance Rulings**



NRIs/OCBs desirous of obtaining advance ruling may make an application stating the question on which the ruling is sought.

The question which could be of law or fact should relate to a transaction undertaken or proposed to be undertaken by the applicant.



### **Bank Accounts for NRIs**

An NRI can maintain bank account in rupees as well as in foreign currency. However, a foreign currency bank account can be opened with authorised dealers only.

#### **Types of NRI Bank Accounts**

There are three types of NRI Bank Accounts. They are:

##### **Non-Resident(External) Rupee Accounts (NRE Accounts):**

NRIs, PIOs, OCBs are eligible. These are rupee denominated accounts. Accounts can be in the form of savings, current, recurring or fixed deposit accounts. Accounts can be opened by remittance of funds in free foreign exchange. Foreign exchange brought in legally, repatriable incomes of the account holder, etc. can be credited to the account.

The deposits can be used for all legitimate purposes. The balance in the account is freely repatriable. There is no income tax or wealth tax on the deposits (except in the case of OCBs). Joint operation with other NRIs/PIOs is permitted. Power of attorney can be granted to residents for operation of accounts.

#### **Eligibility**

1. NRE accounts can be opened by NRIs
2. Joint account is permitted with another NRI.
3. Opening of NRE accounts jointly with residents is prohibited.

#### **Currency of account**

NRE accounts are maintained in Indian Rupee.

#### **Type of account**

All type of accounts like savings bank, current account, Term Deposit etc. can be opened under NRE account scheme.



### **Opening of account**

Account can be opened by filing the application form duly filled up along with photocopy of relevant pages of the passport and a passport size photograph. The initial remittance for opening can be made by transfer from another NRE account of the prospective account holder or by remittance from abroad through banking channel or by tendering foreign currency notes/travellers cheque if the account is opened while on temporary visit to India.

### **Permissible credits to account**

1. Foreign Currency Remittance from abroad in the form of TT, MT, DD, Personal cheque etc. The draft should be in the name of the account holder and not endorsed in his favour. The cheque should be drawn by the account holder on a foreign currency accounts maintained by him abroad.
2. Proceeds of Indian Rupee drafts issued by Banks/Exchange Houses abroad,
3. Proceeds of foreign currency notes/travellers cheques tendered by the account holder in person during his visit to India. If the value of currency notes exceed US\$ 5000 or its equivalent and if the value of travellers cheque and currency notes together exceeds USD 10000 or its equivalent it should be supported by currency declaration form issued by customs authorities.
4. Interest/dividend/maturity proceeds of investment made in India on repatriation basis.
5. Refund of subscription to shares/securities where original payment is made by remittance from abroad or by debit to account holders NRE a/c.
6. Transfer from NRE account of same person or another NRI.

### **Withdrawals**

Withdrawals from NRE accounts are permitted for the following purpose.

1. Local disbursements.
2. Repatriation outside India in any form. However, repatriation in the form of travellers cheque/currency notes will be allowed for travel purpose only. Maximum value of currency note per person will be USD 2000 or its equivalent.



3. Investment in shares/securities/immovable properties other than for engaging in agriculture and plantation activities/real estates business).

**Operation by Power of Attorney**

NRE accounts can be operated by resident attorneys for withdrawal for local payments and investment in shares and securities covered by the general or specific permission of Reserve Bank of India.

Power of Attorney holders are not permitted to open NRI accounts or repatriate out side India funds held in the accounts. They are also not authenticated to makes gifts from NRE accounts.

#### **Repatriability**

Deposit made and interest accrued thereon can be repatriated outside India at any time.

#### **Tax benefits**

Interest accrued on NRE accounts are exempt from Indian Income Tax Act as far as the NRI is resident outside India. No wealth tax payable for the amount outstanding in NRE accounts.

#### **Ordinary Non-Resident Rupee Accounts (NRO Accounts)**

These are Rupee denominated non-repatriable accounts and can be in the form of savings, current or term deposits. These accounts can be opened jointly with close relative in India, also. When an Indian National/PIO resident in India leaves for taking up employment, etc. outside the country, his bank account in India gets designated as NRO account. The deposits can be used to make all legitimate payments in rupees.

#### **Eligibility**

NRO accounts can be opened by all non residents. Not only NRIs but any foreign national or entities (except of Pakistani/Bangladesh nationality/ownership) can open such accounts. Joint accounts with other non residents or residents permitted.

#### **Type of accounts**

All type of accounts like current, savings, fixed deposits, recurring deposits are permitted under the scheme.

**How to open the account**

When a resident becomes non resident his existing account can be converted to NRO account. It can also be opened by filing the prescribed account opening form and by remitting funds from abroad or local source.

**Permissible credits**

1. Remittance from abroad through banking channel.

2. Proceeds of foreign currency travellers cheques/currency notes by the account holder during his temporary visit to India.
3. Loans/advances availed against NRE/FCNR deposit of the account holder.
4. Proceeds of deposit/investment made on non repatriation basis.
5. Any other legitimated dues to the account holder in India including sale proceeds of gold and silver brought from abroad.

#### **Withdrawals**

Amount held in NRO account can be withdrawn for

1. Local payments in Indian Rupee
2. For investments in shares/securities immovable properties on non repatriation basis subject to general or specific permission of Reserve Bank of India.

#### **Repatriability**

Balance under NRO accounts can be repatriated outside India for any bonafide purpose, subject to production of declaration by the account holder under section 195 of Indian Income tax Act, duly verified and certified by a Chartered Accountant in the prescribed format subject to a maximum of USD 1.00 million per calendar year. Interest accrued on NRO account net of tax deducted at source can be credited to NRE account or repatriated outside India as and when required.

#### **Taxability**

Interest income from NRO account is subject to income tax. This tax deducted at source can be claimed as refund by filing the return of Income as per Income Tax Act, provided the tax deducted is in excess of the tax due for the particular assessment year.

#### **Foreign Currency (Non-Resident) Accounts (Banks) (FCNR (B) Accounts)**

NRIs/PIOs/OCBs are permitted to open such accounts as term deposits in the following currencies:



1. US Dollars
2. Sterling Pounds
3. Euro and
4. Japanese Yen
5. Deutsche Mark



Interest income is tax free in the hands of NRI until he maintains a non-resident status or a resident but not ordinarily resident status under the Indian tax laws.

FCNR (B) accounts can also be utilised for local disbursements including payment for exports from India, repatriation of funds abroad and for making investments in India, as per foreign investment guidelines.

### **Tax benefits**

Interest accrued on FCNR accounts are exempt from Indian Income Tax Act as far as the NRI is resident outside India. No wealth tax payable for the amount outstanding in FCNR accounts.

### **Bank Accounts for NRI / PIO**

| <b>Point to Note</b>                            | <b>Non-Resident (External) Rupee Account</b>  | <b>Non Resident Ordinary Account</b>   | <b>Foreign Currency (Non Resident) Bank Account</b>                           |
|---|---|--|---|
| Popularly known as                              | NRE Account   | NRO Account  | FCNR-B Account  |
| Currency in which the Account can be maintained | Rupees  | Rupees   | Pound Sterling, US Dollar, Deutsche Mark, Japanese Yen, Euro                  |
| Who can open                                    | NRI / PIO   | Any person resident outside India (Even foreign citizens can open NRO Account) | NRI / PIO   |
| What are the types of Accounts                  | Any type of Account is allowed. E.g. Current Account, Savings Account, Recurring Deposit, | Any type of Account is allowed. E.g. Current Account, Savings Account,         | Term (Fixed) Deposit<br>Period of Fixed Deposit is between 1 and 3 years only |

Fixed Deposit

Recurring Deposit, Fixed Deposit

Post offices in India can also open Savings Accounts and designate them as NRO Accounts.

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| <b>Point to Note</b>  | <b>Non-Resident (External) Rupee Account</b>  | <b>Non Resident Ordinary Account</b> | <b>Foreign Currency (Non Resident) Bank Account</b> |
|---|---|--------------------------------------|---|
| Can a Power of Attorney Holder of the NRI / PIO open the Account  | No  | No                                   | No  |
| Is a Joint Account allowed  |   |                                      |   |
| Between two Non-Residents   | Yes. Only if both are NRI / PIO   | Yes                                  | Yes. Only if both are NRI / PIO                     |
| <i>Between a Nonresident and a Resident</i>   | No  | Yes                                  | No  |
| Can a Power of Attorney Holder who is a resident operate the Account (E.g. parents in India operating the Account on behalf of the children in USA) | Yes. Only to issue cheques for local payments<br>If the Accountholder has permission to invest in India, then the Power of Attorney holder can make payments for such investments.  | No                                   | Same as NRE Account                                 |
| <i>Are there any restrictions on the operations by Power of Attorney holder</i>   | Yes. The Power of Attorney Holder cannot:<br>Repatriate funds outside India<br>Transfer money to another NRE Account<br>Make a gift on behalf of the Accountholder<br><br>However, from March 2005, the Power of Attorney holder can remit funds out of India | Not Applicable                       | Same as NRE Account                                 |

provided the  
remittance is made  
to the  
Accountholders  
bank account only.

|          | To be credited to the Account | To be credited to the Account | To be credited to existing / new NRE / NRO Account, or |
|----------|-------------------------------|-------------------------------|--|
|          |                               |                               |  |
| Interest | To be credited to the Account | To be credited to the Account | To be credited to existing / new NRE / NRO Account, or |
|          |                               |                               |  |
|          |                               |                               |  |
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| <b>Point to Note</b>           | <b>Non-Resident (External) Rupee Account</b>  | <b>Non Resident Ordinary Account</b> | <b>Foreign Currency (Non Resident) Bank Account</b><br>Interest accrued can be used to start a new Term Deposit by opening a fresh FCNR-B Account |
|--------------------------------|---|--------------------------------------|---|
| Loans to Accountholder         |   |                                      |   |
| <b><i>Currency of loan</i></b> |   |                                      |   |
| a) Loan in India               |   |                                      |   |
| Foreign Currency               | Not Allowed   | Not Allowed                          | Allowed   |
| Indian Rupees                  | Allowed   | Allowed                              | Allowed   |
| b) Loan Outside India          |   |                                      |   |
| Foreign Currency               | Allowed   | Not Allowed                          | Allowed   |
| <b>Procedure for loan</b>      |   |                                      |   |
| a) <i>Loans in India</i>       |   |                                      |   |
| Purpose of Loan                | Personal or Business purposes<br>Investment in firms and companies on non-repatriation basis<br>Purchase of residential house for own use | Same as NRE Account                  | Same as NRE Account   |
| Loan cannot be used for        | Re-lending<br>Agricultural / plantation activities<br>Real estate business  | Same as NRE Account                  | Same as NRE Account   |
| Security for Loan              | Fixed Deposit of the Accountholder  | Same as NRE Account                  | Same as NRE Account   |

| Loan can be repaid by                                   | Redemption of Fixed Deposit                                      | Same as NRE Account | Same as NRE Account |
|---|--|---------------------|---------------------|
|   | Remitting funds from abroad<br>Transfer from local NRO Account   |                     |                     |
| <i>b) Loans outside India</i><br>How to avail this Loan | The overseas branches of the Indian bank can provide any type of | Not Permitted       | Same as NRE Account |
|   |  |                     |                     |
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| <b>Point to Note</b>                          | <b>Non-Resident (External) Rupee Account</b>  | <b>Non Resident Ordinary Account</b>  | <b>Foreign Currency (Non Resident) Bank Account</b> |
|---|---|---|---|
|   | credit facilities to the NRIs. These facilities could be in the form of Line of Credit, Working Capital Loan, Term Loan for new project, Letter of Credit, Bank Guarantee   |   |   |
| Purpose                                       | Any bona fide purpose   | Not Permitted   | Same as NRE Account                                 |
| Loan cannot be used for Security for the Loan | Funds held in NRE Account. (This may not necessarily be in the form of Fixed Deposit)   | Not Permitted<br>Not Permitted  | Same as NRE Account                                 |
| Loan can be repaid by                         | - As the Loan is granted by a Branch outside India, the NRI/PIO can repay it in that country itself out of his income earned there<br>- The NRI/PIO can also transfer the funds from his NRE Account in India to the foreign branch to repay the loan | Not Permitted   | Same as NRE Account                                 |
| Repatriation of balance in Account            | Fully Repatriable   | Partially repatriable<br>(For the list of items for which remittance outside India is allowed, please refer the article | Fully Repatriable                                   |

“Nothing Ordinary about it”

|  |                                  |   |                               |
|--|----------------------------------|---|-------------------------------|
|  |                                  | Interest on the account can be remitted outside                     |                               |
| When the Non-resident becomes a resident | - Account to be re-designated as | India after deduction of tax.<br><br>Account to be re-designated as | NRI can ask for redemption of |
|  |                                  |   |                               |
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| <b>Point to Note</b> | <b>Non-Resident (External) Rupee Account</b>  | <b>Non Resident Ordinary Account</b>               | <b>Foreign Currency (Non Resident) Bank Account</b>  |
|----------------------|---|--|--|
|                      | Resident Account i.e. normal bank account in India, or - Funds in the Account can be transferred to Resident Foreign Currency Account | Resident Account i.e. normal bank account in India | the deposit, or Deposit is allowed to continue till its due date and then redeemed Deposit is converted into resident Foreign Currency Account on maturity |

### Facilities for returning NRIs

#### **Maintenance Abroad of Assets and Bank Accounts of Returning Indians**

Non Resident Indians including Persons of Indian Origin have been exempted from declaring their assets abroad and/or obtaining permission from the Reserve Bank of India to hold the same at the time of their return to India provided such persons have a minimum continuous stay of one year abroad and have acquired such assets lawfully.

The above said general exemption applies to all incomes i.e. interest, dividend earned on foreign exchange assets, bank deposits, investment in foreign shares or securities or immovable properties situated out side India or investment in business out side India. The exemption is also applicable for acquiring foreign currency continuously through such assets. Fresh credit to such assets should be out of foreign currency acquired for which exemption is also available. There is no restriction for the utilisation of such balances held abroad for any bona fide payments, including making further investment in shares, securities or immovable properties abroad provided the cost of such investment and or subsequent payment required is met exclusively out of

such balances eligible for such exemption.

|   |  |  |  |
|---|--|--|--|
| <b>Resident Foreign Currency Accounts (RFC Accounts)</b>  |  |  |  |
| Persons of Indian Nationality/Origin, resident outside India for not less than one year, on becoming residents are free to open and maintain such accounts with authorised dealers. |  |  |  |
| RFC accounts may be in the form of savings (without cheque facility), current or term deposits.   |  |  |  |

The funds may be allowed to be freely utilised by the account holder, for any bona-fide remittances outside India through normal banking channels and for withdrawals in Indian rupees.

On becoming Non Resident, the funds can be transferred abroad or credited to fresh NRE/FCNR accounts.

Where the stay abroad is less than one year, an application in form RFC has to be made to the authorised dealer and referred to the Reserve Bank of India for specific approvals.

## **PIO CARDS**

The Government has announced a scheme for issuance of Persons of Indian Origin (PIO) Cards for Persons of Indian Origin living abroad and having foreign passports. The PIO cards, which would be extended to Persons of Indian Origin settled in countries other than Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan besides introducing a visa free regime, also confer some special economic, educational, financial and cultural benefits to the holders of these Cards.

The Persons of Indian Origin (PIO) Card Scheme has been launched on 31.3.1999.

For this scheme Persons of Indian Origin means a foreign citizen (not being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan or other countries as may be specified by the Central Government from time to time) if,

- (i) he/she, at any time, held an Indian passport, or
- (ii) he/she or either of his/her parents or any of his/her grand parents or great-grand-parents was born in or permanently resident in India as defined in the Government of India Act 1935 and other territories that became part of India thereafter provided neither was, at any time, a citizen of the countries mentioned above or



(iii) he/she is a spouse of a citizen of India or a Person of Indian Origin covered under (i) or (ii) above.

Application in the prescribed form along with an application fee of US \$ 1,000/- (US \$ 750/- refundable in case of rejection of the application) has to be made to an Indian Mission (Embassy/High Commission/Consulate) in the country where the applicant is ordinarily resident and where the applicant is already in India on long term visa (more than one year) to the designated officers in India.

The PIO Card shall be valid for a period of 20 years subject to the validity of the passport of the applicant.

The following facilities shall be extended to the PIO Card holders:-

#### **Visa free entry to India**

For PIO Card holders the requirement for registration with Foreigners Regional Registration Office has been done away with for continuous stay not exceeding 180 days.

All future benefits that would be extended to NRIs would also be available to the PIO Card holders.

**Note:** Details of the PIO Card Scheme, application form, etc. are available on the IIC website - <http://iic.nic.in>.

#### **Indian Investment Centre**

The Indian Investment Centre is a service organisation of the Government of India set up four decades ago for the promotion of foreign private investment in India. It advises overseas investors on setting up industrial projects in India by providing information regarding investment opportunities in India, the Government's industrial policy (including that relating to foreign investment and technology transfer), licensing procedures, taxation laws and facilities and incentives available. It also helps them in finding partners in India.

- (i) It is the nodal agency for investment in India by NRIs and OCBS in which NRI holding is not less than 60 per cent and provides them with hand holding services.
- (ii) It is a service agency providing assistance in the establishment of joint ventures and technical collaborations in India and abroad and third country ventures between

Indian and foreign entrepreneurs.

- (iii) It provides guidance and information to Indian entrepreneurs and assists them in locating suitable foreign firms for collaboration.
- (iv) It assists Indian and foreign entrepreneurs in meeting the procedural requirements of project approvals and in overcoming bottlenecks, if any, in the process of implementation of the project.

- (v) It has a well-maintained reference library covering a wide range of subjects like industry, management, taxation, etc. A cross-section of journals, periodicals and magazines is available for ready reference.
- (vi) It brings out publications which provide authentic information on various aspects of Government policies, procedures and regulations as also facilities, incentives and opportunities available to entrepreneurs in various industrial fields, both in India and abroad. Some of the important publications are in the fields of industrial policy, facilities and incentives for Non Resident Indians and technological development.
- (vii) It provides factual information on current economic developments in India through its Monthly News Letter which is an authentic source of information about industrial licences and letters of intent issued, and foreign collaborations approved, by the Government of India/Reserve Bank of India.
- (viii) It circulates authentic texts of various Press Notes issued by the Department of Industrial Policy and Promotion under Readers' Subscription Service.

In order to promote investment and technology transfer from abroad the Indian Investment Centre has signed Memoranda of Understanding with various organisations.

#### **Availability of Latest Information**

Indian Investment Centre has launched its website on Internet containing latest information relating to NRI/Foreign Investment, Industrial Policies and Procedures, Facilities and Incentives given by Central/State Governments including Questions Asked Frequently by NRIs. The address of the website is as follow:-

**Website:** <http://iic.nic.in>

**E- mail:** [iic@qiasdl01.vsnl.net.in](mailto:iic@qiasdl01.vsnl.net.in)

## ***Part B***

### **Acquisition of Immovable Property outside India**

NRIs can now buy immovable properties in any country outside India and retain them even after their return to India for permanent settlement. In addition the amount lying in the Resident Foreign



Currency Account (RFC) can also be utilised after their return to India for the subsequent purchase of immovable property abroad.

The Regulations which govern acquisition of immovable property outside India is Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000 issued vide Notification No. 7 FEMA/2000-RB dated 3<sup>rd</sup> May 2000).

#### **Restriction on acquisition or transfer of immovable property outside India**

No person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank.

#### **Exemptions**

However, this restriction on acquiring immovable property outside India does not apply to the following persons:

- (a) Held by a person resident in India who is a national of a foreign state;
- (b) Acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.

#### **Procedure for acquiring immovable property in India**

1) A person resident in India may acquire immovable property outside India,

- a) By way of gift or inheritance from a person referred to in sub-section (4) of section 6 of the Act, or from a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank
- b) By way of purchase out of foreign exchange held in Resident Foreign currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2000:

2) A person resident in India, who has acquired immovable property outside India under (1) above may transfer it by way of gift to his relative who is person resident in India;

(For the purpose of this regulation, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual)

**What is a Resident Foreign Currency Account?**

1) A person resident in India may open, hold and maintain with an authorised dealer in India a Foreign Currency Account to be known as a Resident Foreign Currency (RFC) Account, out of foreign exchange-

- (a) Received as pension or any other superannuation or other monetary benefits from his employer outside India; or
- (b) Realized on conversion of assets referred to in sub-section (4) of section 6 of the Act, and repatriated to India; or
- (c) Received or acquired as gift or inheritance from a person referred to in sub-section (4) of section 6 of the Act; or
- (d) Referred to in clause (c) of section 9 of the Act, or acquired as gift or inheritance therefrom.

The funds in a Resident Foreign Currency Account opened or held or maintained in term of sub-regulation (1) shall be free from all restriction regarding utilisation of foreign currency balances including any restriction on investment in any form, by whatever name called, outside India.

### **Liberalised Remittance Scheme of USD 50,000**

#### **Circulars issued in respect of liberalised remittance scheme of USD 50,000**

1. RBI AP (Dir. Series) Circular No. 64 dated 04th February, 2004
2. RBI A.P. (DIR Series) Circular No. 80 dated 18<sup>th</sup> March 2004
3. RBI A.P. (DIR Series) Circular No. 38 dated 31st March 2005
4. Half yearly review of monetary policy dated 31<sup>st</sup> October 2006 enhancing the limit from USD 25000 to USD 50000

In the year 2004, RBI came out with a scheme vide their circular AP (Dir. Series) Circular no 64 dated 04th February, 2004, whereby individuals may remit up to USD 25000/- per calendar year for any current or Capital account transaction or a combination of both. However, on 31<sup>st</sup> October 2006, announcing the half review of monetary policy, RBI increased this limit to USD 50000 per year.

**Eligibility**

All Resident individuals are eligible to avail of the facility under the scheme. This facility is not available to Corporates, Partnership firms, HUF, Trusts etc.

**Purpose**

This facility is available for making remittance up to USD 50000/- per calendar year for any current or Capital account transactions or a combination of both.

Under this facility, Resident Indians will be free to acquire and hold immovable property or shares or any other asset outside India without prior approval of the Reserve Bank of India. Individuals will also be able to maintain and hold foreign currency accounts with a bank outside India for making remittances under the scheme without prior approval of the Reserve Bank of India. The foreign currency account may be used for conducting transactions connected with or arising from remittances eligible under the scheme.

Please note that this facility is available in addition to those already available for private travel, business travel, gift remittances, donations, studies abroad, medical treatment etc. as described in the Schedule III of FEMA (current account transactions) Rules 2000.

**However, the remittance under this scheme is not available for the following:**

1. Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery/sweep stakes, tickets proscribed magazines etc) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
2. Remittances made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan.
3. Remittances made directly or indirectly to countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories" viz. Cook Islands, Egypt, Guatemala, Indonesia, Myanmar, Nauru, Nigeria, Philippines and Ukraine (RBI A.P (DIR) Circular No. 38 dated 31<sup>st</sup> March 2005).
4. Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

**Procedure to be followed to effect remittances under this category:**

When a customer approaches a branch for a remittance under this Scheme the following



procedures must be followed:

1. The customer must designate a branch of an Authorised Dealer through which all remittances under this scheme will be transacted. This is incorporated in the Format declaration itself (Schedule A) and needs to be filled in by the customer.
2. The customer who needs to make this remittance will furnish the following documentation.

3. RBI prescribed letter cum declaration in the format as per Annexure A. - regarding the purpose of the remittance and declaration that the funds belong to the remitter and will not be used for any of the restricted purposes as stated above

### **Conclusion**

Thus the Government's policy of liberalizing the norms for NRI investment in real estate has paved way for tremendous growth in all the sectors of real estate be it, residential, commercial or retail sector. As a result, the coming years will be good for real estate industry as far as investment and developments are concerned. Though we are far behind China in terms of FDI inflows, the Government has done relatively well by opening the doors for NRI investment in real estate industry. With the simplification of investment rules for NRIs, the euphoria in NRI community seems to be increasing by day.

### **Author's bio-data**

A highly acclaimed academician and an active member in various professional bodies, Rajkumar Adukia has been working tirelessly for the cause of the profession. He is a member of the Professional accountants in Business Committee (PAIB) of International Federation of Accountants (IFAC) and the Central Council of the ICAI.

He is a member of numerous committees of the Institute and is actively involved in their working. He has conducted about 5000 seminars & workshops and regularly contributes articles to newspapers and magazines. He has written books on vast range of topics including Internal Audit, Bank audit, SEZ, CARO and real estate.

This primer on Investments in property by NRIs aims to provide detailed insight into some of the standard issues faced by an NRI in investment in immovable property, repatriation and tax planning. This guide deals with the applicable laws for investment, disposal, repatriation, and taxation as well as on borrowing and other facilities available to an NRI.

With the investor friendly attitude of the government, the timing is right for NRIs and similar individuals to invest in their homeland. Written in a highly readable style with illustrative examples, it is hoped that this book will help the interested readers in making informed choices.





