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### **Who is a Non-Resident Indian (NRI)?**

To qualify as an NRI you need to be an Indian citizen who stays abroad for employment OR carrying on business vocation outside India OR stays abroad under circumstances indicating an intention for an uncertain duration of stay abroad as a non-resident.

Persons posted in UN organizations and officials deputed abroad by central or 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).

### **Who is a Person of Indian Origin (PIO)?**

You are defined as a Person of Indian origin (PIO) if,

- a) You have held an Indian passport at any time or
- b) Your father or paternal grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1995 (57 of 1995) and are not a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan.

### **Acquisition and Transfer of Immovable Property**

Acquisition and Transfer of Property in India by an NRI:-

- a) Acquire any immovable property in India other than agricultural/plantation/farm house
- b) Transfer any immovable property in India to a person resident in India.
- c) Transfer any immovable property other than agricultural or plantation property or farm house to a person resident outside India who is a NRI or to a PIO residing outside India.

Acquisition and Transfer of Property in India by a PIO:-

- a) Acquire any immovable property other than agricultural land/farm house/ plantation property in India by purchase, from out of funds received in India by way of inward remittance from a place outside India or from funds held in a ORDINARY NON-RESIDENT RUPEE ACCOUNTS (NRO).
- b) Acquire any immovable property in India other than agricultural land / farm house / plantation property by way of gift or inheritance from a person resident in India or from a NRI or from a PIO resident outside India, in accordance with the provisions of the foreign exchange law in force at the time of acquisition.
- c) Transfer any immovable property in India other than agricultural land/farm house/plantation property, by way of sale to a person resident in India.
- d) Transfer agricultural land/farm house/ plantation property in India, by way of gift or sale to a person resident in India who is a citizen of India.
- e) Transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India who is a citizen of India or to a PIO resident outside India.

## What are the different ways in which an NRI or a PIO can acquire property in India?

	By way of Purchase	By way of Gift	By way of inheritance
<b>Eligibility for NRI or PIO</b>	An NRI/PIO can acquire a residential or commercial property by purchase, by gift and by inheritance, under the general permission granted by the Reserve Bank of India (RBI).		
<b>Non eligible immovable properties</b>	Agricultural land/plantation property/farmhouse in India cannot be acquired by way of purchase.	Agricultural land/plantation property/farmhouse in India cannot be acquired by way of gift or inheritance.	
	Such proposals require specific approval of RBI and the Government of India.		
<b>Eligibility for foreign national</b>	A foreign national of non-Indian origin, resident in India, can purchase an immovable property in India with prior approvals from prescribed authorities.	A foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India by way of gift.	Foreign nationals of non-Indian origin are eligible to hold immovable property acquired by way of inheritance from a resident Indian or NRI or PIO.
<b>Non eligibility of foreign Nationals</b>	A citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan require prior approval of RBI. Such requests are considered by RBI in consultation with the Government of India.		

### Repatriation by an NRI

Repatriation is the transfer of funds from India to accounts held overseas. Repatriation pertaining to real estate in India is in accordance with the provision of the Foreign Exchange Management Regulations, 2000 as defined in Sections 6 and 47 of FEMA, 1999 and Notification No. FEMA 21/2000-RB dated May 3, 2000.

### **Documents required for Repatriation**

To apply for repatriation, an NRI should apply to an authorized dealer in the prescribed format. The documents required for seeking repatriation are:

- a) An application for permission in prescribed format (Form IPI 8) to repatriate the original investment made in immovable property held in India.
- b) Certified copy of the purchase agreement.
- c) Certified copy of the sale agreement.
- d) Original bank documents proving that the purchase has been made from abroad or from an NRE account held by the seller.
- e) Proof of the Capital gain tax, if any, deducted at source and paid to the Government by the purchaser of the property.

## Repatriation Procedure

An NRI/PIO can repatriate the sale proceeds of immovable property in India, the Authorized Dealer may allow repatriation of the sale proceeds outside India, provided the:

- a) The seller acquired the immovable property in accordance with the provisions of the foreign exchange law or FEMA regulations in force at the time of acquisition.
- b) The amount to be repatriated should not exceed:
  - i. The amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or funds held in FCNR account. The foreign currency equivalent of the amount paid, where payment was made out of NRE account.
  - ii. Repatriation of only two residential properties is allowed.
  - iii. Prior permission of RBI must be sought by those intending to repatriate the sale proceeds of immovable property if they are person resident outside India or their successors who held, or acquired immovable property when resident in India or inherited property from a person resident in India.
- c) Sale proceeds of residential/commercial property received by way of gift by NRI/PIO can only be credited to NRO account.
- d) Properties acquired by the way of inheritance:
  - i. Sale proceeds of property inherited from a resident Indian not exceeding USD 1 million can be remitted abroad in one financial year.
  - ii. Sale proceeds of property inherited from an NRI cannot be repatriated.

An NRI can also repatriate refund of

- a) Application / earnest money / purchase consideration made by house-building agencies/seller on account of non-allotment of flats / plots
- b) Cancellation of booking/deals for purchase of residential/commercial properties, together with interest, net of taxes, provided original payment is made out of NON-RESIDENT (EXTERNAL) RUPEE ACCOUNT (NRE) / FOREIGN CURRENCY NON-RESIDENT ACCOUNT (FCNR) /inward remittances.
- c) Housing Loan in rupees availed of by NRIs from authorized dealers / Housing Financial Institutions can be repaid by the close relatives in India of the borrower.

## Basics of NRI Banking

Only banks holding authorized dealers' licenses can only maintain accounts in the names of NRIs. RBI has also authorized certain Co- operative/commercial banks to maintain accounts of NRIs expressed in INR even though they may not be authorized dealers.

Accounts can be maintained by NRIs in INR as well as in foreign currency. The latter can only be maintained with authorized dealers only.

	NRO	NRE	FCNR
Applicable Currencies	Only in Indian Rupees	Only in Indian Rupees	In four currencies - USD, GBP, DEM and Yen
Maintenance of Accounts	With Authorized Dealers	With Authorized Dealers	With Authorized Dealers

<b>Currency for opening the account.</b>	And Co-operative banks authorized by RBI	And Co-operative banks authorized by RBI		
	Any Currency. Amount will be converted to rupees at spot exchange rate	Any Currency. Amount will be converted to rupees at spot exchange rate	Currencies other than the above four will be converted to any of the above four at spot rate	
	<b>Type of accounts and permitted periods</b>	Saving and fixed deposit for periods of 46 days and above.	Savings and fixed deposits for periods of 6 months and above.	Only fixed deposits for a period of 6 months to 36 months.
	<b>Frequency for Interest Rate</b>	At 3 monthly intervals	At 3 monthly intervals	At 6 monthly intervals
	<b>Exposure to Exchange Risk</b>	Yes, there may be a loss in exchange if rupee depreciates.	Yes, there may be a loss in exchange if rupee depreciates.	No, the amount is held in the same currency. Insulation against exchange risk.
	<b>Joint account</b>	Yes, joint accounts are permitted.	Yes, joint accounts are permitted. But all the account holders have to be non residents.	Yes, joint accounts are permitted. But all account holders have to be non residents.
	<b>Nomination</b>	Yes, nominations are permitted.	Yes, but nominees to initiate reverse settlement in non convertible rupees.	Yes, but nominees entitled to receive settlement in non convertible rupees.
	<b>Tax on deposit and interest</b>	Yes. Deposit subject to wealth tax and interest subject to Indian income tax at source.	No. Deposit and interest is exempted from Indian tax.	No. Deposit and interest earned are exempted from Indian tax.
	<b>Authorization to operate the account</b>	A resident can operate the account through a power of attorney.	A resident can operate the account through a power of attorney. However repatriation is now allowed.	A resident can operate the account through a power of attorney. However repatriation is now allowed.
<b>Repatriation of deposit and interest</b>	Principal amount is not repatriable. Interest earned is repatriable subject to limits prescribed by RBI	Principal and interest earned are fully repatriable.	Principal and interest fully repatriable.	

### **Basics of Housing Loans for NRI**

NRIs staying outside India are eligible for housing loans under the stipulations laid out in FEMA, 1999. However, PIO holding foreign passports are not eligible to obtain loans from Housing Finance Companies in India.

Most of the nationalized banks like ICICI, Citibank, PNB, HDFC follow the guidelines set by RBI to sanction loans to NRIs. Banks and housing finance companies offer a range of options viz -home loans, home improvement loans, home extension loans, loans to professionals for office or clinic, home equity loans (loan against property), loan against rent receivables, short term bridging loans etc. The rate of Interest and eligibility are subject to change from time to time.

### **Requirements for an NRI to avail housing loan in India -**

- a) The applicant should be a Graduate.
- b) The monthly income should not be less than \$2000. NRI property loans can be availed against:
  - i. The security of funds held in NRE/FCNR accounts.
  - ii. The security of immovable property other than agricultural, plantation or farm property.
- c) The loan can be availed up to INR 10 mn or 85% of the property cost (including cost of the land), whichever is lower.
- d) The principal shall not be credited to the applicant's NRE/NRO/FCNR accounts.
- e) The housing finance company decides the tenure of the loan for NRI, which does not exceed 15 years.
- f) The loan shall be fully secured by mortgaging either the proposed property or the borrower's other assets in India.
- g) NRI home loan rates are required to be more than that for a resident Indian, in compliance with RBI and National Housing Bank directives.
- h) All documents as applicable to a resident Indian are mandatory along with few other documents like a copy of the passport, the works contract, the Power of Attorney (PAO).

**Documents required while applying for a Home Loan:**

<b>Financial details documents</b>	<ol style="list-style-type: none"> <li>1. <b><u>For Salaried:</u></b> <ol style="list-style-type: none"> <li>a. <b>Employment contract (in English)</b></li> <li>b. <b>Latest salary slip</b></li> <li>c. <b>Latest work permit</b></li> <li>d. <b>Identity card</b></li> <li>e. <b>Visa stamped on the passport.</b></li> <li>f. <b>Continuous Discharge Certificate (CDC) - (if applicable).</b></li> <li>g. <b>Overseas Bank Account Statement for the last four months</b></li> </ol> </li> <li>2. <b><u>For self employed individuals:</u></b> <ol style="list-style-type: none"> <li>a. <b>Certificate of incorporation of business</b></li> <li>b. <b>Last 2 years audited profit and loss account of the company</b></li> <li>c. <b>Last 2 years audited balance sheet of the company</b></li> <li>d. <b>Partnership deed (in case of a partnership firm)</b></li> <li>e. <b>MOA &amp; AOA of the company (in case of a private ltd. company)</b></li> <li>f. <b>Last 3 months bank statements in the company's name</b></li> <li>g. <b>Last 3 months bank statements in individual's name</b></li> </ol> </li> </ol>
<b>Personal details</b>	<ol style="list-style-type: none"> <li>1. One photograph of each applicant (applicant &amp; co-applicant) (All photographs attached to the application form should be signed across)</li> <li>2. Valid passport copies for all the applicants</li> <li>3. Valid visa copies for all the applicants</li> <li>4. Copy of current overseas residential verification proof of all the applicants to the loan. (Driving license or bank statement showing overseas address or</li> </ol>

	latest insurance premium receipt or utility bill) 5. Copy of PAN Card for the 1st applicant OR Form 60
<b>Property Related</b>	<ol style="list-style-type: none"> <li>1. Receipts for payments made for purchase of the residing unit</li> <li>2. Copy of approved drawings/ building plans of proposed construction/purchase/extension</li> <li>3. Agreement for sale/sale deed/detailed cost estimate from Architect/Engineer for property to be purchased/constructed/extended</li> <li>4. Allotment letter from the co-operative society/association of apartment owners (if applicable)</li> </ol>
<b>others</b>	<ol style="list-style-type: none"> <li>1. Power of Attorney</li> </ol>

### Repayment of the loan

- a) Remittance from abroad through normal banking channels given out as Equated Monthly Installments (EMIs) in the form of post-dated cheques or
- b) Debit to his NRE/NRO/FCNR accounts or
- c) From the rent received on his Indian property or
- d) Out of sale proceeds of the immovable property against which such loan was granted.
- e) Repayment by way of EMI commences from the month following the month in which you take full disbursement.
- f) Repayment ahead of schedule is permitted.

### Taxes applicable for NRIs

Under the Income Tax Act, the residency of an individual decides the scope of payable income tax. The residency of the person in the previous year along with the location of the income accrued in that year determines whether a person will be charged income tax as per a resident Indian or a non-resident Indian.

The definitions of a NRI are different under FEMA and Income Tax Act, enabling the individual to be a non-resident of India under one law and resident of India under another. An NRI is liable to pay income tax on income that is

- a) received or deemed to be received in India during the financial year
- b) accrued or deemed to be accrued in India
- c) accrued or deemed to be accrued outside India but its first receipt is in India

### Taxation on Property Transactions

An immovable property (commercial/residential) owned by an NRI is subject to NRI taxation rules and regulations. The NRI taxable income includes the sales proceeds, rent and one of two residential properties as if the property had been let out even if the both are kept vacant. No tax is due on purchase of an immovable property.

The Indian tax laws allow a general deduction of 30% on the rental income and also a deduction towards interest subject to certain conditions.

The following categories of property enjoy exemption from taxation:

- a) Income earned from a farm house that is been used for agricultural purposes.
- b) Income earned from a property used for some charitable purposes.
- c) Property used for self occupation. If such a property is being used for business purposes, then the income earned is taxable under the "Business Income" head and not under head "House Income".

### Capital Gains Tax

Capital gains are the profits earned when a property situated in India, owned by an NRI is sold for a profit. Capital gains can be categorically divided into two types:

- a) Short Term capital gain is the gain on immovable property being sold within a period of 36 months from the acquisition. The liability for taxation is at the rate as per Income Tax Act of India.
- b) Long-Term capital gain is on an asset that has been held for more than 36 months by the NRI. There is no tax on re-investment of long term capital gains and/ or when it is in the form of shares and securities.

*Taxation is specialized subject and it is advisable to use services of a competent Chartered Accountant for exact calculation of Tax liability.*

### **Frequently Asked Questions (FAQs)**

#### **Acquisition of immovable property in India**

1. Who can purchase immovable property in India?

Under the general permission available, NRI and PIO can purchase immovable property in India. The general permission, however, covers only purchase of residential and commercial property and not for purchase of agricultural land / plantation property / farm house in India.

2. Can an NRI/PIO can acquire agricultural land/ plantation property / farm house in India?

A.2. No, an NRI or PIO do not have general permission to acquire agricultural land/ plantation property / farm house in India. Such proposals require specific approval of RBI and the proposals are considered in consultation with the Government of India.

3. Do any documents need to be filed with RBI after purchase?

An NRI or a PIO does not require any documents to be filed with RBI for residential / commercial property purchased under general permission.

4. How many residential / commercial properties can NRI / PIO purchase under the general permission?

There is no restriction on the number of residential / commercial properties that can be purchased.

5. Can a foreign national of non-Indian origin, be a second holder to immovable property purchased by NRI / PIO?

No, a foreign national of non – Indian origin cannot be a second holder of immovable property in India.

6. Can an office of a foreign company purchase immovable property in India?

A foreign company which has established a branch office or any other place of business in India, in accordance with FEMA regulations, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. However, if the foreign company has established a liaison office, it cannot acquire immovable property. The liaison office can lease a property for up-to 5 years.

The payment for acquiring such a property should be made by way of foreign inward remittance through proper banking channel. A declaration (IPI form) should be filed with RBI within 90 days from the date of acquiring the property.

Such a property can also be mortgaged with an Authorized Dealer as a security for other borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of RBI.

However, acquisition of immovable property by entities that have set up branch offices in India and are incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of RBI to acquire immovable property.

7. From whom can the non-resident inherit immovable property? check

A person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) can inherit immovable property from:

- a) A person resident in India.
- b) A person resident outside India

However, the person from whom the property is inherited should have acquired the same in accordance with the foreign exchange regulations applicable at that point of time.

## **II. Transfer of immovable property in India**

8. Can an NRI/ PIO/foreign national sell his residential / commercial property?

Sale of a residential or a commercial property in India by an NRI or a PIO is governed under following guidelines -

- a) An NRI can sell his/ her residential or commercial property in India to a person resident in India, an NRI and a PIO.
  - b) A PIO can sell his/ her residential or commercial property in India, with prior approval from the RBI, to a person resident in India, an NRI or a PIO.
  - c) A foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of RBI to a person resident in India, an NRI and a PIO.
9. Can an agricultural land / plantation property / farm house in India owned / held by a non-resident be sold?

An NRI / PIO may sell agricultural land /plantation property/farm house to a person resident in India, who is a citizen of India. However a foreign national of non-Indian origin resident outside India would need prior approval of RBI to sell agricultural land/plantation property/ farm house in India.

10. Can a non-resident gift his residential / commercial property?

Yes, an NRI / PIO may gift residential or commercial property to a person resident in India, an NRI or a PIO. A foreign national of non-Indian origin needs prior approval of RBI.

11. Can an NRI / PIO / foreign national holding an agricultural land / plantation property / farm house in India gift the same?

An NRI / PIO can gift an agricultural land, plantation property or a farm house in India only to a person resident in India, who is a citizen of India. A foreign national of non-Indian origin needs prior approval of RBI

12. Can an NRI/ PIO mortgage residential or commercial property?

- a) NRI / PIO can mortgage to:
  - i. An authorized Dealer / Housing Finance Institution in India – without the approval of RBI.
  - ii. A party abroad - with prior approval of RBI.
- b) A foreign national of non-Indian origin can mortgage only with prior approval of RBI
- c) A foreign company which has established a Branch Office or other place of business in accordance with FEMA regulations has general permission to mortgage the property with an authorized dealer in India.

### **III. Mode of payment for purchase**

13. How can an NRI / PIO make payment for purchase of residential / commercial property in India?

Payment can be made by NRI / PIO out of

- a) Funds remitted to India through normal banking channel or
  - b) Funds held in NRE / FCNR (B) / NRO account maintained in India
  - c) Payment cannot be made in traveler's cheques or in foreign currency notes. In addition payment cannot be made outside India.
14. What is the process for refund of application money / payment made by the building agencies / seller because of non-allotment of flat / plot / cancellation of bookings / contracts?

The amount of refund, together with interest (net of income tax) can be credited to NRE account. This is subject to condition that the original payment was made by way of inward remittance or by debit to NRE / FCNR (B) account. (Please refer to A.P. (DIR) Series Circular No. 46 dated 12.11.2002)

15. Can NRI / PIO avail of loan from an authorized dealer for acquiring flat / house in India for his own residential use against the security of funds held in his NRE Fixed Deposit account / FCNR (B) account?

Yes, such loans are subject to the terms and conditions as laid down in Schedules 1 and 2 to Notification No. FEMA 5/2000-RB dated May 3, 2000 as amended from time to time. However, banks cannot grant fresh loans or renew existing loans in excess of INR 2 mn against NRE and FCNR (B) deposits either to the depositors or to third parties [cf. A.P. (DIR Series) Circular No. 29 dated January 31, 2007].

Such loans can be repaid

- a) By way of inward remittance through normal banking channel or
  - b) By debit to his NRE / FCNR (B) / NRO account or
  - c) Out of rental income from such property.
  - d) By the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.
16. Can NRI / PIO, avail of housing loan in rupees from an authorized dealer or housing finance institution in India approved by the National Housing Bank?

Yes, NRI/PIO can avail of housing loan in rupees from an Authorized Dealer or housing finance institution subject to certain terms and conditions. (Please refer to Regulation 8 of Notification No. FEMA 4/2000-RB dated 3.5.2000 and A.P. (DIR) Series Circular No. 95 dated April 26, 2003).

17. What is the process of repaying the loan by an NRI or a PIO?

Housing loan can be repaid through one of the following means -

- a) By way of inward remittance through normal banking channel or
  - b) By debit to his NRE / FCNR (B) / NRO account or
  - c) Out of rental income from such property.
  - d) By the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.
18. Can NRI/PIO avail housing loan in rupees from his employer in India?

Yes, subject to certain terms and conditions (Please refer to 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).

#### **IV Repatriation of sale proceeds of residential / commercial property purchased by NRI / PIO**

19. Can NRI / PIO repatriate the sale proceeds of immovable property? If so, what are the terms?

A.22. NRI / PIO may repatriate the sale proceeds of immovable property in India

- a) If the property was acquired out of foreign exchange sources i.e. remitted through normal banking channels / by debit to NRE / FCNR (B) account. The amount to be repatriated should not exceed the amount paid for the property:
    - i. In foreign exchange received through normal banking channel or
    - ii. By debit to NRE account (foreign currency equivalent, as on the date of payment) or debit to FCNR (B) account.
  - b) Repatriation of sale proceeds of residential property purchased by NRI / PIO out of foreign exchange is restricted to not more than two such properties.
  - c) Capital gains, if any, may be credited to the NRO account from where the NRI/PIO may repatriate an amount up to USD one million, per financial year, as discussed below.
  - d) If the property was acquired out of Rupee sources, NRI or PIO may remit an amount up to USD one million, per financial year, out of the balances held in the NRO account (inclusive of sale proceeds of assets acquired by way of inheritance or settlement), for all the bonafide purposes to the satisfaction of the Authorized Dealer bank and subject to tax compliance.
20. If a Rupee loan was taken by NRI/PIO from Authorized Dealer or housing finance institution for purchase of residential property can an NRI / PIO repatriate the sale proceeds of such property?

Yes, provided the loan has been subsequently repaid by remitting funds from abroad or by debit to NRE/FCNR (B) accounts (Please see A.P. (DIR) Series Circular No. 101 dated 5.5.2003)

21. Is there any restriction on number of residential properties in respect of which sale proceeds can be repatriated by NRI / PIO?

Yes, sale proceeds of not more than two residential properties can be repatriated.

22. If the immovable property was acquired by way of gift by the NRI/PIO, can he repatriate abroad the funds from sale?

The sale proceeds of immovable property acquired by way of gift should be credited to NRO account only. From the balance in the NRO account, NRI/PIO may remit up to USD one million, per financial year, subject to the satisfaction of Authorized Dealer and payment of applicable taxes.

23. If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?

Yes, general permission is available to the NRIs/PIO to repatriate the sale proceeds of the immovable property inherited from a person resident in India. NRIs/PIO may repatriate an amount not exceeding USD one million, per financial year, on production of documentary evidence in support of acquisition / inheritance of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.10/2002 dated October 9, 2002. [cf. A. P. (DIR Series) Circular No.56 dated November 26, 2002].

In case of a foreign national, sale proceeds can also be repatriated even if the property is inherited from a person resident outside India. But this is allowed only with prior approval of RBI. The foreign national has to approach RBI with documentary evidence in support of inheritance of the immovable property and the undertaking and the C.A. Certificate as mentioned above.

The general permission for repatriation of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan and Iran and he has to seek specific approval of RBI.

As FEMA specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan, the question of repatriation of the sale proceeds in foreign exchange to Nepal and Bhutan would not arise.

#### **V. Provisions for Foreign Embassies / Diplomats / Consulate Generals**

24. Can Foreign Embassies / Diplomats / Consulate General purchase / sell immovable property in India?

Yes, Foreign Embassies / Diplomats / Consulate Generals can purchase and sell any immovable property other than agricultural land / plantation property / farm house in India with prior clearance from the Government of India, Ministry of External Affairs. The payment should be made by foreign inward remittance through normal banking channel.

#### **VI. Other issues**

25. Can NRI / PIO rent out the residential / commercial property purchased out of foreign exchange / rupee funds?

Yes, NRI/PIO can rent out the property without the approval of the RBI. Rent received can be credited to NRO / NRE account or remitted abroad. Powers have been delegated to the Authorized Dealers to allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs/PIO who do not maintain an NRO account in India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for.[cf. A.P. (DIR Series) Circular No. 45 dated May 14, 2002].

26. Can a person who had bought immovable property when he was a resident, continue to hold such property even after becoming an NRI/PIO?

Yes, he can continue to hold the residential / commercial property / agricultural land/ plantation property / farm house in India without the approval of the RBI.

27. In which account can the sale proceeds of such immovable property be credited?

The sale proceeds may be credited to NRO account.

28. Can the sale proceeds of the immovable property referred to in Q.No. 31 be remitted abroad?

Yes, provided the amount to be remitted does not exceed USD one million per financial year, for all bonafide purposes to the satisfaction of Authorized Dealers and subject to tax compliance.

29. Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of RBI continue to hold the same? Can they transfer such property?

Yes, they may continue to hold the immovable property. However, they can transfer the property only with the prior approval of RBI.

30. Is a resident in India governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?

A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 ie. He would require prior approval of RBI for acquisition and transfer of immovable property in India even though he is resident in India. Such requests are considered by RBI in consultation with the Government in India

## **Definitions**

31. Where are the terms a 'person resident in India' and a 'person resident outside India' defined?

Section 2 (v) and Section 2 (w) of the FEMA, 1999 defines 'person resident in India' and a 'person resident outside India' respectively.

32. What is meant by a person resident in India?

Under FEMA, a person resident in India is defined as a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year (April-March) and who has come to or stays in India either for taking up employment, carrying on business or vocation in India or for any other purpose, that would indicate his intention to stay in India for an uncertain period. In other words, to be treated as 'a person resident in India' under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of the preceding financial year) but has also to comply with the condition of the purpose / intention of stay.

33. What is meant by a person resident outside India?

The Act defines a 'a person resident outside India' as a person who is not a person resident in India' (As defined in Q. 32 above)

34. Who can determine whether a person is resident in India or not?

RBI does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

35. If a foreign national is resident in India as per the provisions of Section 2(v) (i)B of the FEMA, 1999, does he require approval of RBI to purchase any immovable property in India ?

A foreign national resident in India does not require approval from RBI from FEMA angle, but approvals if any required in terms of regulations prescribed by other authorities such as the concerned State Government etc. will have to be obtained by him / her. However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan requires specific prior approval of RBI.

## Bibliography

Reserve Bank of India website

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