

# **Do's and Don'ts for NRIs under FEMA (other than FDI and ODI)**

**Harshal Bhuta**

**M.Com., F.C.A., A.D.I.T.,**

**LL.M. (Hons.) in Intl. Tax Law [Wirtschaftsuniversität Wien]**

# Important definitions under FEMA

def·i·ni·tion

\dē-fə'-nī-shən\

meaning of a word;  
can be subjective

# Definition - Residence

## ❖ Sec 2(v) – Person Resident in India:

### • Individuals

- **Basic Rule:** > 182 days in preceding FY
- **Exception 1 to Basic Rule:** Goes out of India for:
  - ✓ For employment o/s India
  - ✓ For carrying on business / vocation o/s India
  - ✓ For any other purpose indicating intention to stay o/s India for uncertain period
- **Exception 2 to Basic Rule:** Comes to India for:
  - ✓ For employment in India
  - ✓ For carrying on business / vocation in India
  - ✓ For any other purpose indicating intention to stay in India for uncertain period

## ❖ PRI but not permanently resident: Employment for specified duration; specific job / assignment < 3 years. Used at following places:

- No limit for possession of foreign currency in India – FEMA 11(R)
- Contribution to foreign PF / superannuation / pension fund for expatriate staff – FEMA 13(R)
- FEMA 120 not to apply when foreign security is purchased out of forex resources o/s India

## ❖ Basic rule mandatory satisfaction + Intention to be established with supporting documentation including visa– MOF press release dated 1<sup>st</sup> Feb 2009 – (Government’s advice on acquiring land by persons residing outside India)

# Definition – Non-Resident Indian (NRI)

## ❖ Comparison of NRI definition between different Regulations

| Definition   | Regulation   |
|--|--|
| Means a person resident outside India who is a citizen of India  | FEM (Borrowing & Lending in Rupees) Regulation, 2000   |
|  | FEM (Deposits) Regulations, 2000<br>Superceded by FEM (Deposits) Regulations, 2016                         |
|  | FEM (Remittance of Assets) Regulations, 2000<br>Superceded by FEM (Remittance of Assets) Regulations, 2016 |
| Means a person resident outside India who is a citizen of India or <b>is a person of Indian Origin</b> as defined in the said regulation   | FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000                                 |
| Means a individual resident outside India who is a citizen of India or is an ' <b>Overseas Citizen of India</b> ' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955 | FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000                   |

# Definition – Persons of Indian Origin (PIO)

## ❖ Comparison of PIO definition between different Regulations

| Definition  | Regulation   |
|---|--|
| Means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan, or such other country as may be specified by the Central Government, satisfying the following conditions : | FEM (Borrowing & Lending in Rupees) Regulation, 2000   |
| (a)Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or  | FEM (Deposits) Regulations, 2000<br>Superceded by FEM (Deposits) Regulations, 2016                         |
| (b)Who belonged to a territory that became part of India after the 15th day of August, 1947; or   |  |
| (c)Who is a child or grandchild or a <b>great grandchild</b> of a citizen of India or of a person referred to in clause (a) or (b)  | FEM (Remittance of Assets) Regulations, 2000<br>Superceded by FEM (Remittance of Assets) Regulations, 2016 |
| (d)Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)  |  |
| Explanation: for the purpose of this sub-regulation, the expression ‘Person of Indian Origin’ includes an ‘Overseas Citizen of India’ cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.   |  |

# Definition – Persons of Indian Origin (PIO)

## ❖ Comparison of PIO definition between different Regulations

| Definition   | Regulation   |
|--|--|
| <p>Means a citizen of any country other than Bangladesh or Pakistan <b>or Sri Lanka</b>, if</p> <p><b>(a) he at any time held Indian passport; or</b></p> <p><b>(b) 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 the Citizenship Act, 1955 (57 of 1955); or</b></p> <p><b>(c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b)</b></p> | <p>FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000</p>      |
| <p>Means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka <b>or Afghanistan or China or Iran or Nepal or Bhutan</b>), who</p> <p><b>(a) at any time held Indian passport; or</b></p> <p><b>(b) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);</b></p>   | <p>FEM (Acquisition and Transfer of Immovable property in India) regulations, 2000</p> |

# Deposits and Accounts by Non-Residents



# NRE Account vs. FCNR(B) Account vs. NRO Account

| Particulars                      | NRE Account  | FCNR(B) Account   | NRO Account   |
|----------------------------------|--|---|---|
| <b>Who can open an account</b>   | <ul style="list-style-type: none"> <li>NRI and <b>PIOs</b> (Individual of Pakistan &amp; Bangladesh require prior approval of RBI)</li> </ul>                    | <ul style="list-style-type: none"> <li>NRI and <b>PIOs</b> (Individual of Pakistan &amp; Bangladesh require prior approval of RBI)</li> </ul> | <ul style="list-style-type: none"> <li>Any person resident outside India (including NRI/<b>PIO</b>) (Individual/Entities of Pakistan &amp; Bangladesh require prior approval of RBI)</li> </ul> |
| <b>Who is authorized to open</b> | <ul style="list-style-type: none"> <li>Authorised Dealer</li> <li>Authorised Banks (including co-op bank other than AD)</li> </ul>                               | <ul style="list-style-type: none"> <li>Authorised Dealer</li> <li>Regional Rural Bank</li> </ul>  | <ul style="list-style-type: none"> <li>Authorised Dealer</li> <li>Authorised Banks (including co-op bank other than AD)</li> </ul>  |
| <b>Currency</b>                  | <ul style="list-style-type: none"> <li>INR</li> </ul>  | <ul style="list-style-type: none"> <li>Forex (Any foreign currency which is freely convertible)</li> </ul>                                    | <ul style="list-style-type: none"> <li>INR</li> </ul>   |
| <b>Type of Account</b>           | <ul style="list-style-type: none"> <li>Savings</li> <li>Current</li> <li>Recurring/Fixed Deposit</li> </ul>  | <ul style="list-style-type: none"> <li><b>Term Deposit only</b></li> </ul>  | <ul style="list-style-type: none"> <li>Savings</li> <li>Current</li> <li>Recurring/Fixed Deposit</li> </ul>   |
| <b>Period for fixed deposits</b> | <ul style="list-style-type: none"> <li>From 1 to 3 years (However, banks are allowed to accept NRE deposits &gt; 3 years from their AL point of view)</li> </ul> | <ul style="list-style-type: none"> <li>Between 1 to 5 years</li> </ul>  | <ul style="list-style-type: none"> <li>As applicable to resident accounts (eg: even 6 months)</li> </ul>  |
| <b>Rate of Interest</b>          | <ul style="list-style-type: none"> <li>As per guidelines issued by the Department of Banking Regulations</li> </ul>  |   |   |



# NRE Account vs. FCNR(B) Account vs. NRO Account

## ❖ NRE & FCNR (B) account

### • Permitted Credits

- a) Inward remittances from o/s India thru banking channels
- b) Personal cheques of FCA outside India / travellers cheques / bank drafts deposited by the account holder in person during his temporary visit to India
- c) Tender of foreign currency / bank notes during his temporary visit to India
- d) Transfers from other NRE/ FCNR(B) accounts
- e) Interest accruing on the funds held in the account
- f) Current income in India due to the account holder, subject to payment of applicable taxes in India (like rent, dividend, pension, interest) **(no qualification of earlier investment account source i.e. original investment could have been made from either NRE or NRO a/c)**
- g) Maturity or sale proceeds of any permissible investment in India which was originally made from NRE/FCNR(B) a/c or out of inward remittances from o/s India thru banking channels  
*(FEMA Notf. 21/2000 - Sale of immovable property in India: Credit to NRE a/c restricted to 2 properties during lifetime and also restricted to investment amount from NRE a/c)*
- a) Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if subscription amount was paid from NRE/ FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels
- b) Refund of application / earnest money / purchase consideration made by the house building agencies / seller on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, together with interest, if any (net of income tax payable thereon), was paid from NRE / FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels and AD is satisfied about the genuineness of the transaction

# NRE Account vs. FCNR(B) Account vs. NRO Account

## ❖ NRE & FCNR (B) account

- Permitted Debits
  - a) Local disbursements
  - b) Remittances outside India
  - c) Transfer to NRE/ FCNR(B) accounts of the account holder *or* any other person eligible to maintain such account
  - d) Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by RBI
  
- FCNR(B): If inward remittance is in currency other than designated currency, currency conversion costs for conversion into designated currency to be borne by remitter. Fully covered swap is permitted in such cases.

# NRE Account vs. FCNR(B) Account vs. NRO Account

## ❖ NRO account

- Permitted Credits
  - a) Inward remittances from o/s India thru banking channels
  - b) Tender of any permitted currency during his temporary visit to India
  - c) Legitimate dues in India of the account holder
  - d) Transfers from other NRO accounts
  - e) Rupee gift / loan made by a resident to a NRI / PIO relative within the limits prescribed under LRS
- Permitted Debits
  - a) All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by RBI
  - b) Remittance outside India of current income in India of the account holder net of applicable taxes
  - c) Transfers to other NRO accounts (whether of account holder or other eligible person?)
  - d) Balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions (Limit of \$1 million over and above current income repatriation – FAQ 3 of Accounts in India by NR) (Undertaking from remitter for own funds)
  - e) Funds can be transferred to NRE account within this USD 1 Million facility
  - f) Settlement of charges on International Credit Cards issued by AD in India to NRIs or PIOs, upto USD 1 Million per financial year

# NRE Account vs. FCNR(B) Account vs. NRO Account

| Particulars           | NRE Account  | FCNR(B) Account   | NRO Account  |
|-----------------------|--|---|--|
| <b>Repatriability</b> | <ul style="list-style-type: none"> <li>• Repatriable</li> </ul>  | <ul style="list-style-type: none"> <li>• Repatriable</li> </ul> | <ul style="list-style-type: none"> <li>• Not repatriable except for all current income.</li> <li>• <b>Individual:</b> Balances in an NRO account of NRIs/ PIOs are remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets.</li> <li>• <b>Entities:</b> RBI permission</li> </ul> |
| <b>Taxability</b>     | <ul style="list-style-type: none"> <li>• Exempt</li> </ul>   | <ul style="list-style-type: none"> <li>• Exempt</li> </ul>      | <ul style="list-style-type: none"> <li>• Taxable<sup>1</sup></li> </ul>  |
| <b>Joint account</b>  | <ul style="list-style-type: none"> <li>• Jointly with two or more NRIs/ PIOs</li> <li>• Jointly with resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013)</li> <li>• The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder.</li> </ul> |   |  |

# NRE Account vs. FCNR(B) Account vs. NRO Account

| Particulars                              | NRE Account  | FCNR(B) Account | NRO Account  |
|--|--|-----------------|--|
| <b>Operations by resident POA holder</b> | <p><u>Permitted</u></p> <ul style="list-style-type: none"> <li>• Withdrawal for local payments</li> <li>• Make investments in India</li> <li>• Remittance to account holder himself thru banking channels</li> </ul> <p><u>Prohibited</u></p> <ul style="list-style-type: none"> <li>• Remittance outside India to other than account holder himself</li> <li>• Make payment by gift to resident</li> <li>• Transfer funds to other NRE account</li> </ul> |                 | <p><u>Permitted</u></p> <ul style="list-style-type: none"> <li>• Withdrawal for local payments</li> <li>• Make investments in India</li> <li>• Remittance outside India of current income, net of taxes</li> </ul> <p><u>Prohibited</u></p> <ul style="list-style-type: none"> <li>• Remittance outside India to other than account holder himself</li> <li>• Make payment by gift to resident</li> <li>• Transfer funds to other NRO a/c</li> </ul> |
| <b>Loans outside India (Secured)</b>     | <ul style="list-style-type: none"> <li>• AD may allow their branches/ correspondents o/s India to grant loans to NRI/PIO or to Third Parties for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements.</li> <li>• The term “loan” shall include all types of fund based / non-fund based facilities</li> </ul>  |                 | <ul style="list-style-type: none"> <li>• <b>Not permitted</b></li> </ul>   |

# NRE Account vs. FCNR(B) Account vs. NRO Account

| Particulars           | NRE Account   | FCNR(B) Account | NRO Account   |
|-----------------------|---|-----------------|---|
| <b>Loans in India</b> | <ul style="list-style-type: none"> <li>AD can sanction loans in India to NRI/PIO/ third parties without any limit, subject to usual margin requirements.</li> <li><b>These loans cannot be repatriated outside India</b></li> <li>Should be used <b>only for personal purposes</b> or <b>business purposes</b> (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business)</li> <li>In case of loans sanctioned to a third party, there should be no direct/indirect forex consideration for NRI/PIO agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities</li> <li>In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from o/s India thru banking channels or out of self NRO a/c</li> <li>The facility for premature withdrawal of deposits not be available in such cases</li> <li>The <u>term “loan” includes all types of fund based/non-fund based facilities</u></li> </ul> |                 | <ul style="list-style-type: none"> <li>Loans against the deposits can be granted in India to the account holder or third party subject to usual norms and margin requirement. The loan amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate business.</li> <li>The <u>term “loan” includes all types of fund based/ non-fund based facilities</u></li> </ul> |

# NRE Account vs. FCNR(B) Account vs. NRO Account

| Particulars   | NRE Account  | FCNR(B) Account  | NRO Account   |
|---|--|--|---|
| <b>Change in residential status from Non-resident to resident</b> | <ul style="list-style-type: none"> <li>NRE accounts should be designated as resident accounts <b>or</b></li> <li>Funds held in these accounts may be transferred to the RFC accounts <b>immediately</b> upon change of residential status</li> </ul> | <ul style="list-style-type: none"> <li>FCNR (B) deposits <b>allowed to continue</b> till maturity at the contracted rate of interest</li> <li>AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts <b>or</b> RFC account</li> </ul> | <ul style="list-style-type: none"> <li><u>From PROI to PRI:</u> <b>Immediately</b> designated as resident accounts</li> <li><u>From PRI to PROI*:</u> <b>Immediately</b> designated as NRO account</li> </ul> |

# Deposits from NRI / PIO

## ❖ Deposit from NRI/PIO on repatriation basis:

- A Indian company including NBFC registered with the Reserve Bank **cannot accept fresh deposits on repatriation basis**. It can, however, renew the deposits it had accepted in accordance with terms and conditions mentioned in Schedule 6 of Foreign Exchange Management (Deposit) Regulations), 2016.

## ❖ Deposit from NR towards Directorship:

- Keeping deposits with an Indian company by persons resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly.



# Deposits from NRI / PIO

## ❖ Deposit from NRI/PIO on non-repatriation basis:

| Particulars                | Deposit on non-repatriation basis  |
|----------------------------|--|
| Who can accept the deposit | Proprietorship concern, firm, Indian company (including NBFC)  |
| Mode                       | Private arrangement or public deposit scheme   |
| Credit rating              | If NBFC, then credit rating is required  |
| Maturity                   | < 3 years  |
| Interest                   | As prescribed under Companies (Acceptance of Deposits) Rules, 2014 → 12.5 %  |
| Investment                 | <b>Debit to NRO a/c only.</b> Inward remittance and transfer from NRE/FCNR(B) a/c prohibited.  |
| End use restriction        | Amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate or investment in any other entity engaged in above |
| Repatriability             | Not allowed  |

❖ Indian companies can also accept deposits from NRIs or PIOs by issue of a commercial paper subject to conditions

# Resident bank account maintained by residents in India - Joint holder -liberalization

- Individuals resident in India are permitted to include non-resident Indian (NRI) close relative (s) (NRI as defined in regulation 2(vi) of Notification No FEMA 5/ 2000-RB dated May 3, 2000, as amended from time to time and relative as defined in Section 6 of the Companies Act, 1956 as a joint holder(s) in their resident savings bank accounts on “Either or Survivor” basis subject to the following conditions:
- Such account will be treated as resident bank account for all purposes and all regulations applicable to a resident bank account shall be applicable.
- Cheques, instruments, remittances, cash, card or any other proceeds belonging to the NRI close relative shall not be eligible for credit to this account.
- **The NRI close relative shall operate such account only for and on behalf of the resident for domestic payment and not for creating any beneficial interest for himself.**
- Where the NRI close relative becomes a joint holder with more than one resident in such account, such NRI close relative should be the close relative of all the resident bank account holders.
- **Where due to any eventuality, the non-resident account holder becomes the survivor of such an account, it shall be categorized as Non-Resident Ordinary Rupee (NRO) account as per the extant regulations.**
- Onus will be on the non-resident account holder to keep AD bank informed to get the account categorized as NRO account and all such regulations as applicable to NRO account shall be applicable.
- The above joint account holder facility may be extended to all types of resident accounts including savings bank account.

# Acquisition of Immovable Property in India



# Immovable Property in India

## ❖ Applicable to Non-resident Indians (NRIs) / Persons of Indian Origin (PIOs)

| Particulars   | NRI   | PIO                              |
|---|---|----------------------------------|
| <b><u>Acquisition</u></b>   |   |                                  |
| Purchase (other than agricultural land/ farmhouse / plantation etc) <b>from</b>       | Resident / NRI<br>Reg 3(a) & 4(d)   | Resident / NRI<br>Reg 4(a)       |
| Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) <b>from</b> | Resident / NRI / PIO<br>Reg 4(b)  | Resident / NRI / PIO<br>Reg 4(b) |
| <b><u>Inheritance</u></b>   |   |                                  |
| Acquire (any IP) as inheritance <b>from</b>   | a) Any <u>person resident outside</u> who has acquired it under laws in force<br>b) under section 6(5) of FEMA<br>Reg 4 (c) |                                  |

### ❖ **Points to be Noted:**

- NRI cannot purchase IP from PIO (other than NRI); Nor PIO (other than NRI) can purchase from another PIO (other than NRI)
- NRI / PIO cannot acquire agriculture land / farmhouse / plantation etc; Can only receive through inheritance; Once acquired by way inheritance can only sell to Resident
- PIO includes NRI

# Immovable Property in India

## ❖ Applicable to Non-resident Indians (NRIs) / Persons of Indian Origin (PIOs)

| Particulars   | NRI                                     | PIO  |
|---|---|--|
| <b><u>Sale</u></b>  |   |  |
| Sell (other than agricultural land / farmhouse / plantation etc) to | Resident / NRI / PIO<br>Reg 3(b) & 3(c) | Resident<br>Reg 4(d)                           |
| Sell (agricultural land / farmhouse / plantation etc) to            | Resident<br>Reg 3(b)                    | Resident who is a citizen of India<br>Reg 4(e) |
| <b><u>Gift</u></b>  |   |  |
| Gift (other than agricultural land / farmhouse / plantation etc) to | Resident / NRI/ PIO<br>Reg 3(b) & 3(c)  | Resident / NRI/ PIO<br>Reg 4(f)                |
| Gift (agricultural land / farmhouse / plantation etc) to            | Resident<br>Reg 3(b)                    | Resident who is a citizen of India<br>Reg 4(e) |
| Gift residential / commercial property to                           | Resident / NRI/ PIO<br>Reg 4(f)         | Resident / NRI/ PIO<br>Reg 4(f)                |

## ❖ **Points to be Noted:**

- Transfer includes inheritance ?
- PIO (other than NRI) can transfer by way of sale / gift of agricultural land / farmhouse / plantation etc only to Resident who is citizen of India; but NRI can transfer to resident in India irrespective of citizenship

# Immovable Property in India

## ❖ Payment for Acquisition of Immovable Property

- Out of funds received in India through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE / FCNR (B) / NRO account;
- Payments cannot be made by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above

## ❖ Repatriation of sale proceeds of immovable property

- Property acquired by way of Sec 6(5) or his successor cannot repatriate outside India the sale proceeds of such immovable property without the prior permission of the RBI except by NRIs and PIOs up to USD 1 million
- Sale of IP (other than agricultural land/ farm house/ plantation property) in India by a NRI/ PIO resident outside India provided:
  - IP acquired by the seller in accordance with FEMA
  - The amount to be repatriated does not exceed the amount paid for acquisition of IP
  - In case an immovable property in India has been purchased by an NRI/ PIO out of housing loans availed in terms of Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000, and the repayments for such loans are made out of remittances received from abroad through banking channels or by debit to the NRE/ FCNR(B) account of the NRI, such repayments may be treated as equivalent to foreign exchange received.
  - In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties

# Immovable Property **in India**

## ❖ DOs for NRIs / PIOs

- Can acquire property for holding/self-use
- Can sell the property & repatriate sale proceeds abroad, most of the times
- Can give the property on rent & repatriate funds abroad after payment of taxes
- No limit on number of properties acquired in India

## ❖ DON'Ts for NRIs / PIOs

- Can not buy agricultural property, plantations & farm houses
- Can not do Real Estate Trading, or trade in Transferable Development Rights

# Remittance of Assets O/s India





# Remittance of Assets o/s India by NRI/PIO

- ❖ AD Bank may allow to remit upto \$ 1 million per year (popularly known as \$1 million scheme):
  - out of :
    - balances in NRO
    - sale proceeds of assets
    - assets acquired in India by way of inheritance/ legacy;
  - in respect of assets acquired under a deed of settlement made by either of his / her parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler;
  - in case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift and remittance of sale proceeds of such property would be guided by instructions on remittance of balance in the NRO account mentioned above
  
- ❖ NRI/PIO to give declaration that
  - Remittance is out of balances held in the account arising from his / her legitimate receivables in India
  - Remittance is not by borrowing from any other person
  - Remittance is not a transfer from any other NRO account

# Borrowing and Lending between NRI / PIO & PRI



£ € ₹ ¥ \$

# Borrowing and Lending in Forex

## ❖ Borrowing by resident individual in forex:

- An individual resident in India may borrow a sum not exceeding US\$ 250,000/- or its equivalent from his **close relative outside India**, subject to the conditions:
  - the minimum maturity period of the loan is **one year**;
  - the loan is **free of interest**; and
  - the amount of loan is received by **inward remittance** in free foreign exchange through normal banking channels or by **debit to the NRE/FCNR account** of the non-resident lender.

## ❖ Borrowing by NRI / PIO close relative in forex under LRS??

## ❖ ‘Relative’ means a ‘relative’ as defined under the Companies Act, 1956 / 2013??

| Act of 1956  | Act of 2013   |
|--|---|
| U/s 6: MEANING OF "RELATIVE"<br>A person shall be deemed to be a relative of another, if, and only if,<br>(a) they are members of HUF; or<br>(b) they are husband and wife ; or<br>(c) the one is related to the other in the manner indicated in Schedule IA. | U/s 2(77) “relative”, with reference to any person, means anyone who is related to another, if—<br>(i) they are members of HUF; or<br>(ii) they are husband and wife; or<br>(iii) one person is related to the other in such manner as may be prescribed. |

# Borrowing and Lending in Forex

❖ ‘Relative’ means a ‘relative’ as defined under the Companies Act, 1956 / 2013??

| Act of 1956 (Schedule IA)          | Act of 2013 (As prescribed)       |
|------------------------------------|-----------------------------------|
| Father                             | Father (including step-father)    |
| Mother (including step-mother)     | Mother (including step-mother)    |
| Son (including step-son)           | Son (including step-son)          |
| Son's wife                         | Son's wife                        |
| Daughter (including step-daughter) | Daughter                          |
| Father's father                    | Daughter's husband                |
| Father's mother                    | Brother (including step-brothers) |
| Mother's mother                    | Sister (including step-sisters)   |
| Mother's father                    | -                                 |
| Son's son                          | -                                 |
| Son's son's wife                   | -                                 |
| Son's daughter                     | -                                 |
| Son's daughter's husband           | -                                 |
| Daughter's husband                 | -                                 |
| Daughter's son                     | -                                 |
| Daughter's son's wife              | -                                 |
| Daughter's daughter                | -                                 |
| Daughter's daughter's husband      | -                                 |
| Brother (including step-brothers)  | -                                 |
| Brother's wife                     | -                                 |
| Sister (including step-sister)     | -                                 |
| Sister's husband                   | -                                 |

# Borrowing and Lending in Rupees

## □ Persons Resident in India borrowing in INR from NRIs/PIOs

❖ **Borrowing in INR by Indian companies:** A Indian company may borrow in INR, on **repatriation** or **non-repatriation basis**, from NRIs/PIOs subject to following:

- i. Borrowing company **does not and shall not:**
  - Carry on agricultural/plantation/real estate business; or
  - Trade in transferable development rights; or
  - Act as Nidhi or Chit fund company.
- ii. Borrowing is by issuance of **NCDs** and made by **public offer**;
- iii. The rate of interest is **not more than PLR of SBI + 3%**;
- iv. Period of loan should **> 3 years**;
- v. If the borrowing is on **repatriation basis**, then the **ratio of % of NCDs issued to NRIs/PIOs : total paid up value of all NCDs issued shall not > FDI ceiling** for Indian company. Further, the funds towards borrowing should be received through **inward remittance** from outside India or by **debit to NRE/FCNR (B) a/c**;
- vi. If the borrowing is on **non-repatriation basis**, then the amount of loan should be received either by **inward remittance** from outside India or by **debit to NRE/NRO/FCNR(B) a/c**. Payment of **interest and repayment of principal** shall be made only to the **NRO a/c**.

# Borrowing and Lending in Rupees

## □ Persons Resident in India borrowing in INR from NRIs/PIOs

❖ **Borrowing in INR by persons other than Indian companies:** PRI (other than India company) can borrow in INR from NRIs/PIOs subject to following:

- Borrowing shall be only on a **non-repatriation basis**;
- The amount of loan should be received either by **inward remittance** from outside India or by **debit to NRE/NRO/FCNR(B)** account of the lender;
- Period of loan should be **< 3 years**;
- Rate of interest on the loan shall not be **more than two per cent above Bank Rate** prevailing on the date of avilment of loan;
- Payment of **interest and repayment of principal** shall be made only to **NRO a/c** of lender.

## ❖ **Restriction on use of borrowed funds:**

- The proceeds shall be **utilised only for the own business of the borrower** other than
  - Agricultural / plantation activities / real estate business / construction of farm houses;  
or
  - Trading in transferable development rights; or
  - Business of Nidhi or Chit fund company.
- The proceeds **shall not be used for investment or for on-lending in any manner whatsoever**. RBI may, however, permit use of borrowed amount for on-lending to infrastructure sector or to keep them in fixed deposits with banks in India, pending utilisation for permissible end-uses.

# Borrowing and Lending in Rupees

❑ Lending by authorised dealers in INR to NRIs for own requirements or own business purposes: AD can grant INR loans to a NRI against security of shares and other securities or against the security of immovable property (other than agricultural or plantation land or farm house) subject to following:

- **Restriction on use of borrowed funds** given in *Slide 30*. Loan proceeds cannot be used for any other activity where foreign investment is not allowed.
- The **loan amount shall not be remitted outside India or credited to NRE/FCNR(B) a/c;**
- The **repayment of loan** should be either by **inward remittance** from outside India or by **debit to NRE/NRO/FCNR(B) a/c** and/or **out of sale proceeds realised through securities offered for the loans**. Further, these loans can also be repaid by any relative (as defined under Companies Act) of the borrower in India through account to account transfer;
- AD may also grant INR loans to NRI **for any other purpose** provided it is as per the board approval policy of AD and **loan proceeds are not used for investment in capital market including margin trading and derivatives**. Repayment of the loan shall happen by remittance from outside India or by debit to NRE/FCNR(B)/NRO account.

❑ Other borrowing and lending transactions

- ❖ Lending by authorised dealers in INR to NRIs for acquiring shares under ESOP
- ❖ Lending in INR by an authorised dealer or a housing finance institution to NRI/PIO for housing purpose
- ❖ INR loans by Indian body corporate to its NRI/PIO employees

## Borrowing and Lending in Rupees

- ❑ **INR Loans by Resident Individual to NRI relative:** A resident individual may grant INR loan to a NRI relative by way of crossed cheque/electronic transfer subject to following:
  - The loan is **free of interest** and the **minimum maturity of the loan is one year**;
  - The loan amount should be **within LRS limits per year**;
  - **Restrictions on utilisation** of loans as given in *Slide 30*;
  - The loan **shall not be remitted outside India** but be **credited to the NRO a/c**;
  - **Repayment of loan** shall be made by way of **inward remittances** from outside India or by **debit to the NRO/NRE/FCNR(B) account** of the borrower.
  
- ❑ **Change of status of borrower from PRI to PROI:** **AD may allow continuance** of loan/overdraft till its original maturity subject to its satisfaction of its commercial judgment. So long as the borrower continues to remain a person resident outside India, the **repayment shall be out of inward remittance** from outside India or from NRE/FCNR(B)/NRO a/c of the borrower.
  
- ❑ **Change of the status of the lender from PRI to PROI:** Repayment of the loan by the resident borrower should be made by **credit to the NRO account of the lender**.



# Import and Export of Foreign Currency



# Foreign Currency

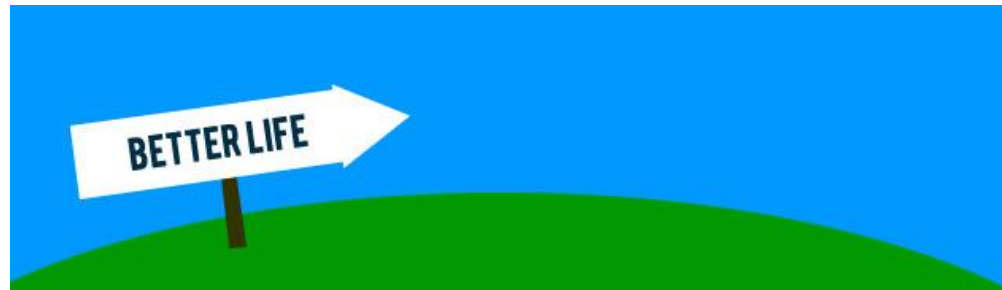
## ❖ Import into India

- **Send** into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques
- **Bring** into India from any place outside India without limit foreign exchange (other than unissued notes), provided:
  - person on arrival in India to make declaration to Custom authorities in Currency Declaration Form (CDF)
  - Declaration not required when, currency notes + bank notes + traveller's cheques at any one time  $\leq$  US\$ 10,000 or equivalent; **and**
  - Currency notes at any one time  $\leq$  US\$ 5,000 or equivalent

## ❖ Export from India

- **Any person** may take or send out of India:
  - Cheques drawn on FC Account in India
  - FC obtained from AD bank on drawl  $\rightarrow$  LRS
  - Currency in the safes of vessels or aircrafts
  - FC possessed u/reg FEM (Possession and Retention of Foreign Currency) Regulations, 2015  $\rightarrow$   $\leq$  US\$ 2,000
  - Unspent FC brought back by him to India while returning from travel abroad  $\rightarrow$   $\leq$  US\$ 2,000
- **PROI**  $\rightarrow$  take out of India unspent FC not exceeding the amount brought in by him and declared in CDF on his arrival in India

# Emigrating Indians



# Emigrating Indians

## ❖ Assets in India: Sec 6(5)

- A person resident outside India may **hold, own, transfer or invest** in **Indian currency, security or any immovable property situated in India** if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

## ❖ Bank a/cs

- Resident a/c into NRO a/c
- EEFC and RFC(D) balance can be credited into NRE/FCNR(B) a/c

## ❖ Shares and Securities

- Immediately intimate company, registrar, broker, depository of change in residential status to comply with FEMA Notf. 20 provisions

## ❖ Borrowings and lending

- See *Slide 32* for impact of change in residential status

## ❖ Immovable property – Covered u/s 6(5)

## ❖ Insurance policy

- Can continue to hold life/general insurance policy in India. No permission required for payment of premium

## ❖ Partner in firm or proprietor of concern

- Can continue to remain partner/proprietor. Intimation to be given about change in status.

# Returning Indians



# Returning Indians

## ❖ Assets abroad: Sec 6(4)

- A person resident in India may **hold, own, transfer or invest** in **foreign currency, foreign security or any immovable property situated outside India** if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

## ❖ Bank a/cs

- Redesignation of NRO/NRE/FCNR a/c
- Continuation of Foreign bank accounts covered under Sec 6(4)
- Can take benefit of RFC a/c

## ❖ Shares and Securities – Covered u/s 6(4)

## ❖ Immovable property – Covered u/s 6(4)

## ❖ Insurance policy

- Can continue to hold life/general insurance policy o/s India. No permission required for payment of premium. However, maturity proceeds to be repatriated within 7 days.

## ❖ Partner in firm or proprietor of concern

- Advisable to take RBI permission to continue being partner/proprietor of foreign firm/concern.

## ❖ Movable assets?

## Section 6(4) - Clarification

- In terms of sub-section 4 of Section (6) of FEMA, a person resident in India is free to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
- **Sub-section 4 of Section (6)** of FEMA covers the following transactions:
  - **Foreign currency accounts** opened and maintained by such a person when he was resident outside India;
  - **Income earned through employment or business or vocation outside India** taken up or commenced while such person was resident outside India, or **from investments made** while such person was resident outside India, or **from gift or inheritance received** while such a person was resident outside India;
  - **Foreign exchange including any income arising** therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
- A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any **fresh investments abroad without approval of Reserve Bank**, provided the cost of such investments and/ or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

# Resident Foreign Currency (RFC) Account

| Particulars                  | Resident Foreign Currency (RFC) Account   |
|------------------------------|---|
| Who can open the account     | <ul style="list-style-type: none"><li>• Individuals</li></ul>   |
| Joint account                | <ul style="list-style-type: none"><li>• Jointly with eligible persons; or With resident relative(s) on former or survivor basis</li></ul> |
| Type of Account              | <ul style="list-style-type: none"><li>• Current</li><li>• Savings</li><li>• Term deposits</li></ul>                                       |
| Interest                     | <ul style="list-style-type: none"><li>• De-regulated (As decided by the AD bank)</li></ul>  |
| Tenure                       | <ul style="list-style-type: none"><li>• <b>No time limitation</b></li></ul>   |
| Change of Residential Status | <ul style="list-style-type: none"><li>• Balance from NRE/FCNR(B) a/c</li><li>• can be credited to RFC A/c</li></ul>                       |



# Resident Foreign Currency (RFC) Account

## Permitted Credits

- Foreign exchange received by him as **pension/ superannuation/ other monetary benefits from overseas employer**
- **Foreign exchange realised on conversion of the assets referred to in Sec 6(4) of FEMA**
- Gift/ inheritance received from a person referred to in Sec 6(4) of FEMA
- Foreign exchange acquired before the July 8, 1947 or any income arising on it held outside India with RBI permission
- Foreign exchange received as proceeds of LIP claims/ maturity/ surrendered value settled in forex from an Indian insurance company
- Balances in NRE/ FCNR(B) accounts on change in residential status

## Permitted Debits

- **No restrictions on utilization in / outside India**

# General Dos and Don'ts



## DOs for NRIs

- ❖ Distinguish between PRII & PROI
- ❖ Distinguish current account transactions from capital account transactions
- ❖ Inform respective persons of the change in residential status
- ❖ Plan ahead- keep a track of investments made from rupee funds in India and funds remitted from abroad
- ❖ Understand repatriability of sale proceeds of assets located in India
- ❖ Comply with statutory guidelines for filing documents / reporting requirements for different transactions
- ❖ Give Power of Attorney for all Indian matters to trusted persons
- ❖ Follow custom baggage rules for movable assets when transfer of residence
- ❖ Take benefit of OCI card scheme

## DON'Ts for NRI

- ❖ Executing Capital Account transactions which are prohibited / not covered by a general permission
- ❖ Effecting current account transactions which are prohibited / restricted
- ❖ Instructing residents to make onward payments on their behalf
- ❖ “Netting off” of transactions with residents
- ❖ Receiving gifts of property from resident relatives not expressly allowed
- ❖ Cannot open PPF a/c in India

# Thank You



|                  |   |
|------------------|---|
| <b>Address</b>   | 2-I, Jeevan Sahakar, 2nd Floor, Sir P. M. Road, Fort, Mumbai – 400001, India. |
| <b>Telephone</b> | +91 22 22660010/3427; 43471727  |
| <b>Mobile</b>    | +91 9930114418  |
| <b>Fax</b>       | +91 22 22662793   |
| <b>E-mail</b>    | <a href="mailto:harshal.bhuta@bhutaco.com">harshal.bhuta@bhutaco.com</a>      |
| <b>Website</b>   | <a href="http://www.bhutaco.com">www.bhutaco.com</a>                          |