



Seminar on Tax Planning for NRI

Organized by

The Western India Regional Council
of

The Institute of Chartered Accountants of India

Dos & Don'ts under FEMA for NRIs

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Agenda



- **NRI/Emigrants Dilemma**
- **Dos and Don'ts - General**
- **Overview of FEMA**
- **Meaning of NRI/PIO and Person Resident of India**
- **Classification of transactions**
- **Entry Strategy and avenues for investment**
- **Investment in Immovable Properties**
- **Bank Accounts in India by NRI/PIO**
- **Borrowings & Lending from/ to NRI/PIO**
- **Remittance of Assets**
- **Q&A**

NRI/ Emigrant's Dilemma



The Dilemma

- What is my residential status under FEMA in the year of migration?
- Do I need to inform any authority about the change in my residential status & the risks of not so informing?
- As an NRI can I repatriate current income / sale proceeds of assets/ investments held in India prior to becoming NRI?
- As an NRI do I need to follow any regulations under FEMA for investments in India?
- Can I continue to hold bank accounts & other investments in India/ abroad, as the case may be?

Typical stakes

- Bank accounts, Fixed Deposit receipts, Credit cards
- Investment in Partnership/ Proprietorship / Private Limited Companies Directorship in Private / Public companies
- Immovable Properties
- Investment in shares & securities in India
- Loans taken from / given to residents in India
- Housing loans from Banks

Dos and Don'ts - General



Dos for NRIs

- **Understand the intent & purpose of FEMA**
- **Understand meaning of NRI**
- **Distinguish between Resident & Non Resident**
- **Inform change in residential status**
- **Distinguish between Current & Capital Account transactions**
- **Understand repatriability of income & sale proceeds of assets**
- **Plan ahead- Keep track of investments made from rupee funds held in India on non repatriation basis and funds remitted from abroad**
- **Comply with prescribed filing / reporting requirements**

Don'ts for NRIs

- **Effecting Current account transactions which are prohibited/ restricted**
- **Executing Capital Account transactions which are either prohibited or not covered by general or specific permission**
- **Instructing residents to make onward payments on their behalf**
- **“Netting off” of transactions with residents**

Overview of FEMA Provisions



09.01.2016

Transition from FERA to FEMA – Shift in focus

The Foreign Exchange Regulation Act, 1973 ('FERA')

- **Object- Conservation of Foreign Exchange**
- **Severe penal provisions including imprisonment**
- **Applied to Indian Citizens in/outside India and Foreign Citizens in India.**
- **Blanket powers of search, seizure, imprisonment, etc.**
- **Presumption of Mens-rea**

The Foreign Exchange Management Act, 1999 ('FEMA')

- **Object- Facilitating external trade and payments and promoting orderly development and maintenance of foreign exchange market**
- **Contravention attracts penalty / fine and not imprisonment (except in some cases) / compounding**
- **Citizenship - not relevant / Residence - Emphasized**
- **Restricted power of search, seizure, etc.**
- **No Presumption of Mens Rea..... Prosecution to prove**
- **Provision for compounding**

What is new under FEMA Regime?

- **Emphasis on residential status**
- **Restrictions on current account transactions removed (However, RBI authorised to impose reasonable safeguards/restrictions)**
- **Capital account transactions are deregulated**
- **Definition of NRI changed from purpose to residence**
- **Offences under FEMA are not regarded as criminal offences and only invite penalties, not prosecution and imprisonment.**
- **Compounding powers to RBI**
- **Less stringent & more business friendly**

Trigger points

- **Examples -**
 - **Transaction between a Person Resident in India and a Person Resident Outside India**
 - **Transaction by a Resident in Foreign Exchange**
 - **Transaction by a Non resident in Rupees**
 - **Transaction by a Resident Outside India**
 - **Transaction by a Non Resident in India**

Broad Framework

FEMA 1999

- In all 49 sections of which 9 (s1 to 9) are substantive and the rest are procedural/administrative.
- Section 46 of the Act empowers Central Government to makes rules and section 47 of the Act empowers RBI to make regulations to implement provisions and rules made there under.

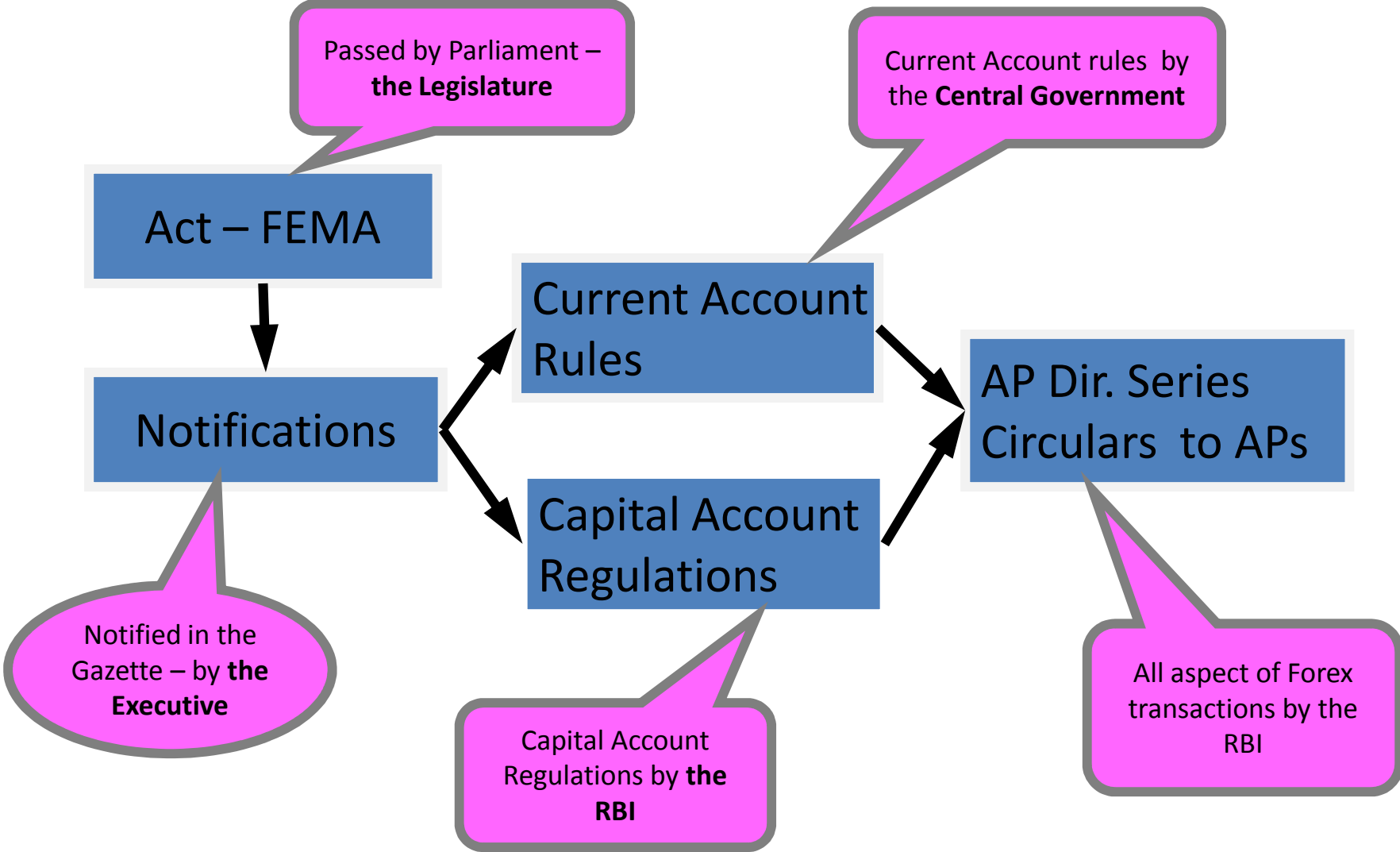
FEMA Rules / Regulations

- Rules notified by Central Government...(Current account transactions, Compounding regulations, Prescribe forms of appeal & fees etc.)
- Regulations notified by the Reserve Bank of India (RBI) (Capital account transactions) in consultation with RBI and the Central Government.

RBI

- **Notifications** on Capital Account Transactions,
- **Regulation of Current Account (Schedule III) rules** - Notified by the Central Government
- **Directions - [AP (Dir) Circulars]** issued to Authorised Dealers
- **Master Circulars** – In July every year (now regular updates available on [Http://rbi.org.in](http://rbi.org.in))
- **F.A.Qs** (updated available on <http://www.rbi.org.in>)

Broad Framework



Broad Framework

Section	Description
1	Application and Commencement of FEMA. (Extends to whole of India. Applies to all branches, offices and agencies outside India, of person resident in India. Applies to contravention committed outside India by any person to whom the Act applies)
2	Definitions (Foreign Exchange, Person, Person resident in India, Current Account Transactions, Capital Account Transactions, etc.)
3 to 9	Provisions relating to Regulations and Management of Foreign Exchange
10 to 12	Provisions relating to Authorized Person
13 to 15	Provisions relating to Contraventions and Penalties
16 to 38	Provisions relating to Adjudication, Appeal and Directorate of Enforcement
39 to 49	Miscellaneous Provisions

Broad Framework

- **SECTION 2** - Important Definitions – Capital & Current Account Transactions, Resident, etc.
- **SECTION 3** - Prohibits dealings in foreign exchange except through an authorised person i.e an authorised dealer, money changer, off shore banking unit or any other person being authorized to deal in foreign exchange or foreign securities.
- **SECTION 4** - restrains any person resident in India from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside India except as specifically provided in the Act.
- **SECTION 6** - deals with capital account transactions.
- **SECTION 7** - deals with export of goods and services
- **SECTIONS 13 and 15** - of the Act deal with penalties and enforcement of the orders of Adjudicating Authority
- **SECTION 36 to 37** - pertains to the establishment of Directorate of Enforcement and the powers to investigate violation of any provisions of the Act



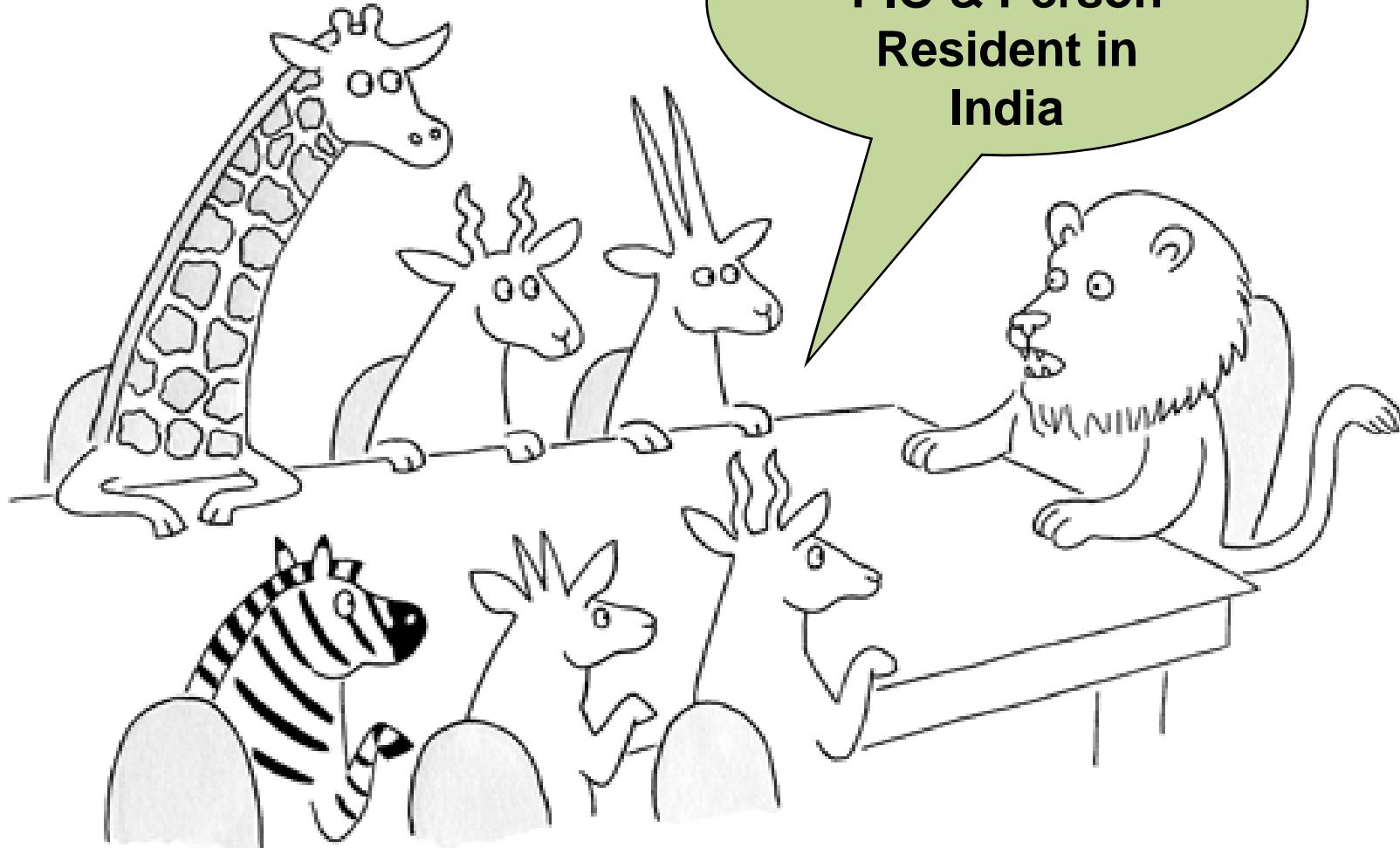
Sec 3 - Dealing in Foreign Exchange...

- Save as otherwise provided in the Act, rules or regulations or with general or specific permission of RBI - No person shall
- **3(a)**
- **Deal in** or transfer any foreign exchange or foreign security to any person not being an authorised person
 - Deal in is a wide term and will include purchase, sale, borrowing, lending, etc.
 - Payments made locally in Rupees are also covered
- **3(b)**
- **Make any payment to**, or for the credit of any person resident outside India (NR) **in any manner**
 - Intention is to prohibit direct and indirect payment to NR

...Sec 3 - Dealing in Foreign Exchange

- **3(c)**
- **Receive otherwise through an A.D.** any payment by order or on behalf of any NR in any manner
 - **Explanation** - where a resident receives any payment **without corresponding inward remittance** than such payment would be regarded as having been received otherwise than through authorised person
- **3(d)**
- **Enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person**
 - **Explanation** – “financial transaction” means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

**Meaning of NRI/
PIO & Person
Resident in
India**



Non Resident Indian (NRI)/ Person of Indian Origin (PIO)

Non Resident Indian (NRI)

- NRI has not been defined under the FEMA Act. However, NRI has been defined differently under several notifications, e.g.

- Under Notification No. 13- Remittance of Assets-

An “NRI” is defined to mean a person residing outside India, who is a citizen of India.

- Under Notification No. 5 – Deposits -

“An “NRI” is defined as a person resident outside India who is a citizen of India or is a Person of Indian Origin (PIO)”

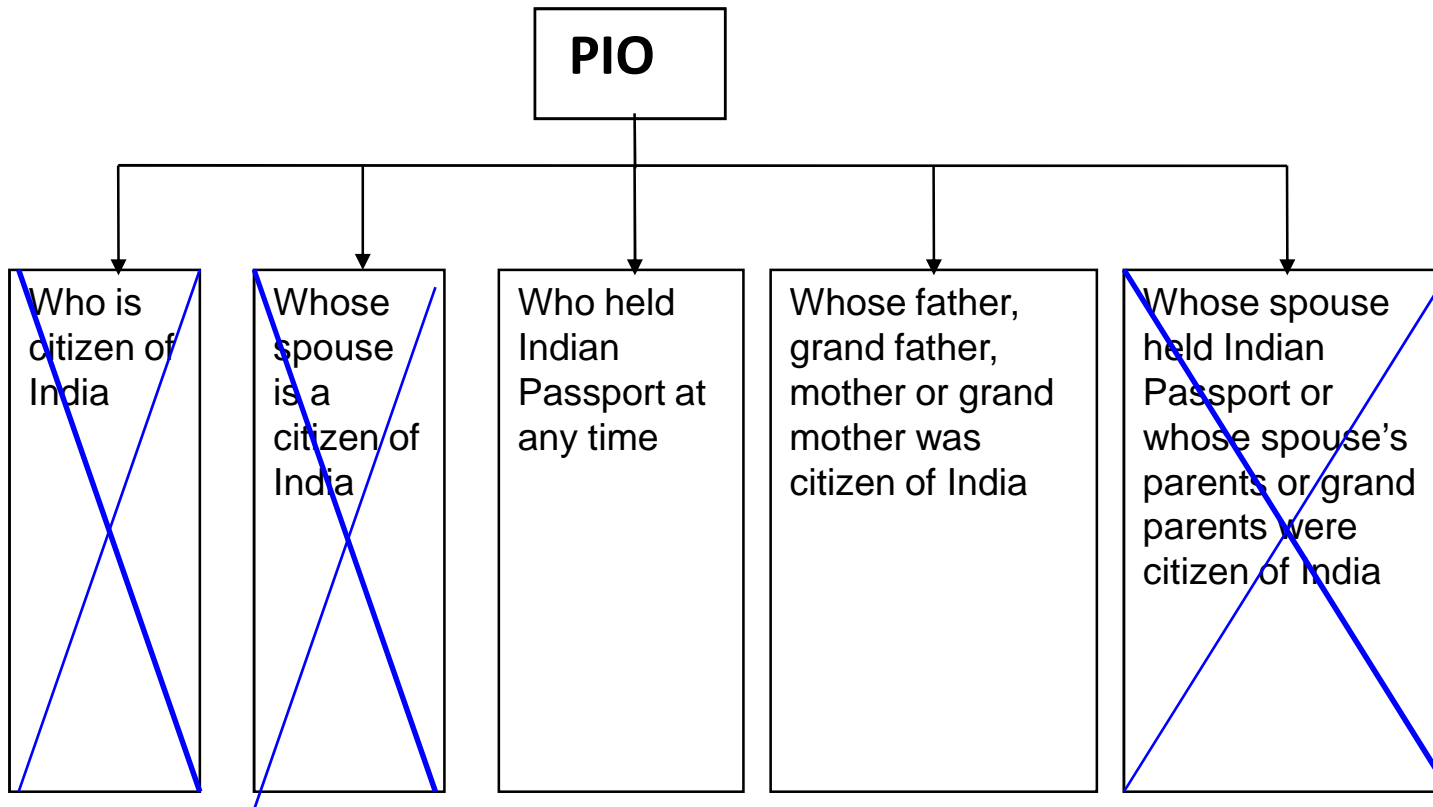
It is possible that you may be an NRI under FEMA, yet you may be a resident under the Income tax laws.

Person of Indian Origin (PIO)

- The term **PIO** is also not defined in FEMA, 1999 but it is defined differently under several Notifications and hence the meaning of **PIO** is contextual. E.g. PIO is defined differently in:

- Regulation 2 of FEMA 5 (Deposit) Regulations, 2000
 - Regulation 2(c) of FEMA- 21 (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
 - Regulation 2 of FEMA 24 (Investment in a Firm or Proprietary concern in India)
 - Most other notifications follow the FEMA 5 (Deposit) definition of PIO

Example: PIO - Notification 5 Vs. 21



Scope of PIO defined under Notification – 5 is wide. The scope of PIO is restricted under Notification – 21 and also excludes citizens of 8 neighboring countries

Person Resident in India

Defined under Section 2(v) of FEMA :

A person (being an individual) residing in India for more than 182 days during the course of the preceding financial year **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 outside India, or
- b) for carrying on outside India a business or vocation outside India, or
- c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

[RBI Clarification on Residential Status of Students Abroad- Refer AP 45 dated 8.12.2003]

(B) A person who has **come to or stays in India, in either case, otherwise than—**

- a) for or on 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;

Individual leaving India: Conditions for residence

1. Did he reside in India for more than 182 days during the preceding financial year ?

Or

2. Purpose for leaving India is otherwise than:

- employment
- business/vocation
- any other purpose indicating his intention to stay outside India for uncertain period,

If answer to question 1 and any of question 2 above is also yes, then he is a resident for the year or else he is Non resident.

Example- 1 : Individual leaving India

- *Mr. X leaves India on 1st January 2015 for taking up employment outside India for the first time. What will be his residential status? Can he acquire agricultural land in India before 30th June, 2015?*

- Mr. X will be considered a non-resident, w.e.f. 1st January, 2015 irrespective of the fact that he was residing in India for more than 182 days in the preceding financial year 2014-2015 in view of Exception (A) (a) of the definition.
- Therefore, Mr. X will not be eligible to purchase agricultural land in India.

Individual coming to India: Conditions for residence

1. Did he reside in India for more than 182 days during the preceding financial year ?

And

2. Purpose for coming to India:

- employment
- business/vocation
- any other purpose indicating his intention to stay in India for uncertain period ,
- -----

If answer to question 1 & any of question 2 above is yes, then he is a resident for the year.

Example-2 : Individual coming to India

- *Mr. Y, staying in Dubai for past several years came to India on 1st May 2015 for medical treatment. He has not visited India during F.Y. 2014-2015. He is planning to return to Dubai after medical treatment. Doctors have advised him to stay in India up to 31st December 2015. What will be his residential status under FEMA for the financial years 2015- 2016 & 2016-2017?*

-
- Notwithstanding his stay exceeding 182 days in India during the current year, Mr. Y was not present in India for 182 days or more during the preceding financial year 2014-2015. Hence he continues to be a non-resident during the financial year 2015-2016. His situation is also covered by Exception B of the definition.
 - His situation for financial year 2016-2017 is covered by Exception B(c) of the definition since Mr. Y's stay in India will be for a specific purpose and not for uncertain period. Hence he will continue to be a non-resident during the financial year 2016-2017 as well despite the fact he was present in India for a period exceeding 182 days during the previous financial year.

Example-3 : Individual coming to India

- *Mr. Mark, a foreign citizen of non-Indian origin comes to India for the first time and sets up a proprietary concern in India on 1st November 2015 for carrying on business. What will be his residential status for the financial year 2015-2016?. Can he acquire Immovable property in India during Financial year 2016-2017 or 2017-18?*

- Mr. Mark will be considered non-resident in India for financial year 2016-17 as he was not in India during the preceding financial year 2015-16 for 182 days.
- Hence, he will not be entitled to acquire immovable property during Financial Year 2016-2017.
- However, he will be resident of India for financial year 2017-18 if his stay in India exceeded 182 days during the preceding financial year 2016-17 and hence will be allowed to buy immovable property during 2017-18

Effect of change in residential status on existing assets

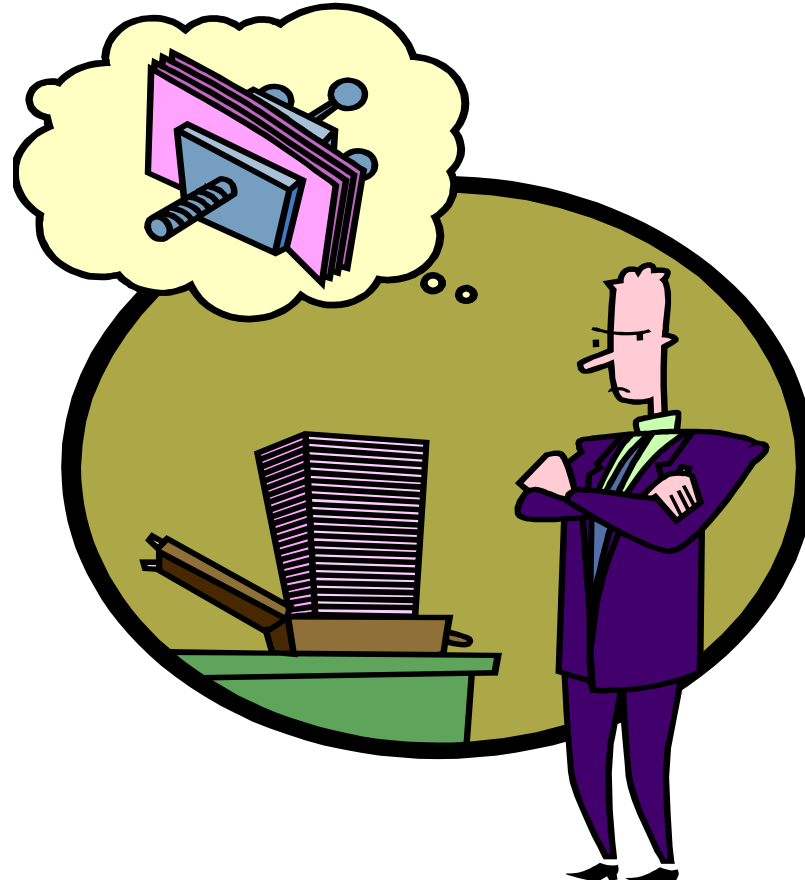
From Non Resident to Resident – Section 6(4):

- 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

From Resident to Non –Resident Section 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

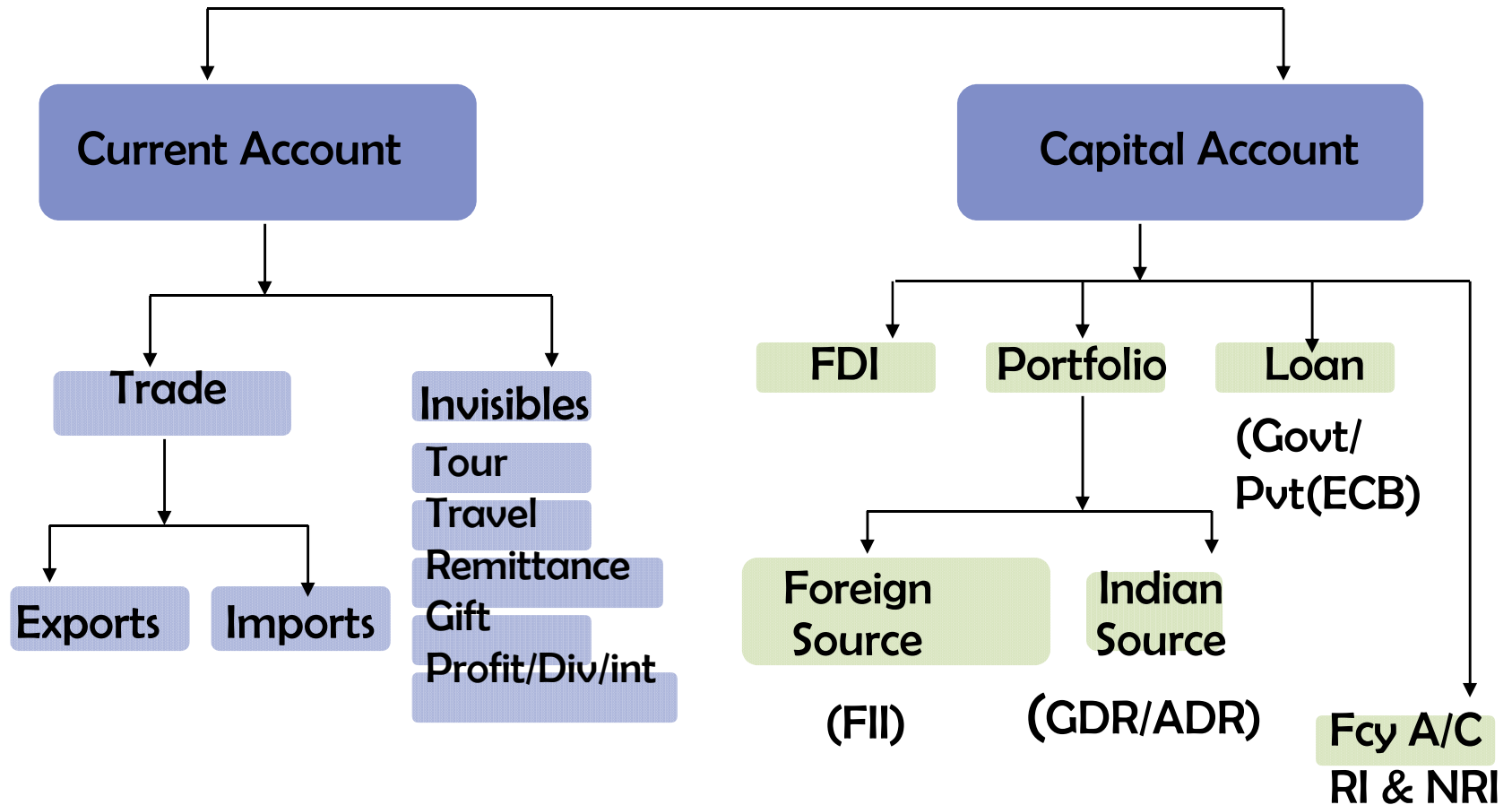
Classification of Transactions



Capital & Current Account Transactions

Section 2(e) – Capital Account Transaction	Section 2(j) – Current Account Transaction
<p>A transaction which alters the assets or liabilities</p> <ul style="list-style-type: none"> ➤ Outside India of persons resident in India, (including Contingent Liabilities); ➤ In India of persons resident outside India; and ➤ Includes transactions specified in Section 6(3). <ul style="list-style-type: none"> ○ Foreign security by resident; ○ Any Security by non-resident; ○ Transfer or issue of any security or foreign security by any branch, office or agency in India of a non-resident; ○ Borrowing / Lending in Foreign Exchange; ○ Borrowing / Lending in rupees between residents and non-residents; ○ Deposits between residents and non residents; ○ Holding of currency or currency notes; ○ Acquisition / transfer of immoveable property in India / outside India (except those on lease for less than five years); ○ Giving of guarantee / surety by resident / non-residents. 	<p>A transaction other than a capital account transaction which include:</p> <ul style="list-style-type: none"> ▪ Payments due in connection with foreign trade, other current business, services, short-term banking and credit facilities in the ordinary course of business; ▪ Payments due as interest on loans and as net income from investments; ▪ Remittances for living expenses of parents, spouse and children residing abroad; and ▪ Expenses on foreign travel, education and medical care of parents, spouse and children.

FOREIGN EXCHANGE TRANSACTIONS



Current Account Transactions are freely permitted unless specifically restricted. Capital Account Transactions are prohibited unless generally or specifically permitted

Current Account Transaction Rules

- Transactions expressly prohibited – [Schedule I read with Rule 3](#)
- Transactions which require prior approval of Government of India – [Schedule II read with Rule 4](#)
- Transactions which require prior approval of RBI – [Schedule III read with Rule 5](#)
- [Relaxations from Rule 4 and 5 for many items paid from Resident Foreign Currency \(RFC\) Account and Exchange Earners Foreign Currency \(EEFC\) Accounts.](#)



Current Account Transaction Rules

Transactions Expressly Prohibited (Schedule I read with Rule 3)	Prior approval of Government of India – (Schedule II read with Rule 4)
<ol style="list-style-type: none">1. Remittance out of lottery winnings;2. Remittance of income from racing / riding or any other hobby;3. Remittance for purchase of lottery tickets, banned/prescribed products;4. Payment of commission on exports made towards equity investment in Joint Venture / Wholly Owned Subsidiary abroad of Indian companies;5. Remittance of dividend by any company where dividend balancing is applicable;6. Payment of commission on exports under Rupee state credit route, except commission up to 10 percent of invoice value of exports of tea and tobacco;7. Payment related to 'Call Back Services' of telephones;8. Remittance of interest income on funds held in Non – Resident Special Rupee (Account) Scheme.	<ol style="list-style-type: none">1. Cultural Tours2. Advertisement in foreign print media exceeding USD 10,000 except for promotion of tourism, foreign investments and international bidding3. Remittance of freight of vessel chartered by a Public Sector Unit4. Payment for import by a Government Department on C.I.F. basis5. Multi- modal transport operators making remittance to their agents abroad6. Remittance of hiring charges of transponders by TV channels, Internet service providers7. Remittance of container detention charges exceeding the rate prescribed8. Remittance of prize money / sponsorship of sports activity abroad exceeding USD 1,00,000 by person other than International / National / State Level sports bodies9. Remittance for membership of P & I Club

Current Account Transactions – Schedule III read with Rule 5 (As amended by AP Dir Circular 106 dated June 1, 2015)

Transactions Permissible without RBI approval for Resident Individuals (Para I of Schedule III read with Rule 5)

1. A resident individual can remit up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both for-
 - i. Private visits to any country (except Nepal and Bhutan).
 - ii. Gift or donation.
 - iii. Going abroad for employment.
 - iv. Emigration.
 - v. Maintenance of close relatives abroad.
 - vi. Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
 - vii. Expenses in connection with medical treatment abroad.
 - viii. Studies abroad.
 - ix. Any other current account transaction
2. For item nos. (iv) emigration, (vii) expenses in connection with medical treatment abroad and (viii) studies abroad in Para 1 of Schedule III, individuals may avail of exchange facility for an amount in excess of the overall limit prescribed under the LRS, if it is so required by a country of emigration, medical institute offering treatment or the university respectively.
3. A person who is resident but not permanently resident in India and (a) is a citizen of a foreign State other than Pakistan; or (b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Current Account Transactions – Schedule III read with Rule 5 (As amended by AP Dir Circular 106 dated June 1, 2015)

Transactions Permissible without RBI approval for Persons other than Individuals (Para II of Schedule III read with Rule 5)

1. The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.
 - i. Donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for-
 - i. creation of Chairs in reputed educational institutes,
 - ii. contribution to funds (not being an investment fund) promoted by educational institutes; and
 - iii. contribution to a technical institution or body or association in the field of activity of the donor Company.
 - ii. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
 - iii. Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
 - iv. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.”

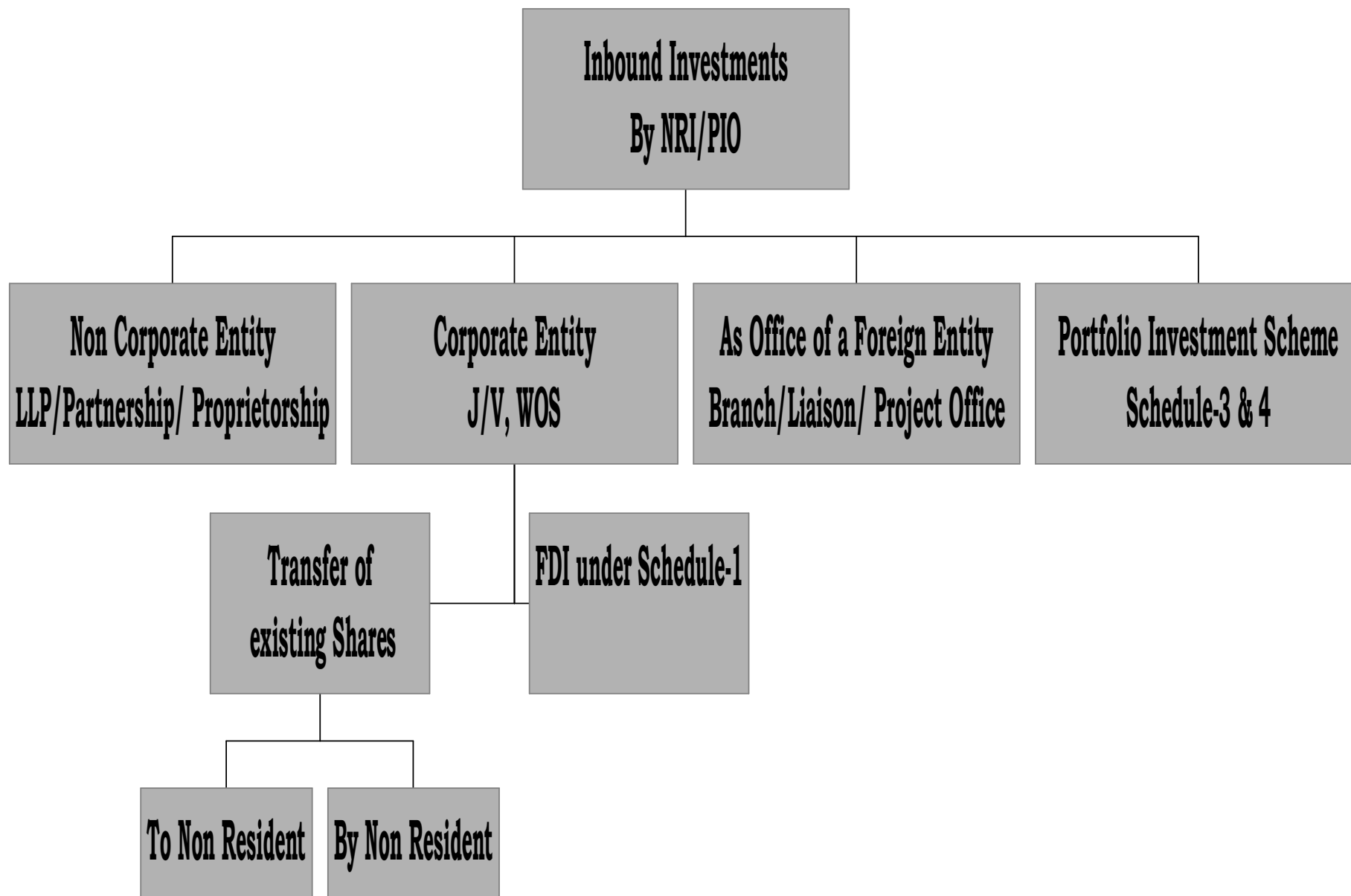
Capital Account Transactions – Don'ts for NRIs

Regulation 4(b) of Notification 1

- No person Resident outside India can invest in in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage –
 - in the business of chit fund, or
 - as Nidhi Company , or
 - in agricultural or plantation activities or
 - in real estate business, or construction of farm houses or
 - in trading in Transferable Development Rights (TDRs).
- Similarly FDI in following activities is prohibited –
 - Activities/ sectors not opened for private sector e.g. Atomic Energy
 - Lottery Business
 - Gambling and Betting

Entry Strategy & Avenues for Investment





FDI in LLP

- So far, [FDI in LLPs] was allowed only through Government Route. However, in order to boost economic growth in India, the Government has revised the FDI policy qua investment in LLP.
- Foreign Capital participation in LLPs – allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.
- Revised position modified vide Press Note 12 (2015 Series) dated 24th November, 2015 is as follows-
 - a) FDI – permitted under **Automatic route** in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI linked Performance conditions.
 - b) Company or LLP – Having FDI – permitted – Downstream investment in another company or LLP. This is only permitted in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.
 - c) FDI in LLP is subject to the compliance of the conditions of LLP Act, 2008.
- RBI Notification is still awaited.

FDI in Partnership/Proprietorship

- **Permissible only for NRIs/PIOs**
 - PIO not to include citizens of Bangladesh, Pakistan or Sri Lanka
- **Restricted Activities**
 - Print Media, Agricultural/ Plantation & Dealing in land and immovable property
- **Capital invested is not repatriable unless approved by SIA/RBI**
 - Window under US \$ 1 M can be useful
- **Profit/Income freely repatriated**

FDI in Corporate Entity

- Strategic Investments through JV/WOS
- Capital
 - Equity, Fully & Compulsorily Convertible Preference Shares/Debentures
 - New subscription/ transfer of existing instruments
 - Convertible instruments- Pricing policy to be determined upfront
 - Rate of dividend on Preference shares can not exceed 300 basis points over SBI PLR
- Issue Price
 - Listed company – As per SEBI Guidelines
 - Unlisted company – At Par for initial subscription/ As per Internationally accepted valuation methodology for subsequent investments- transfers
- Shares / convertible debentures can not be issued to acquire existing shares of an Indian company
- Mode of payment
 - Inward remittance / Debit to NRE / FCNR Account / Capitalization of lump sum fee, royalty and ECBs (other than import dues deemed as ECB or Trade Credit)

FDI in Corporate Entity Routes of Investment

Automatic Route

- Permitted for most sectors
- No prior approval needed, only post-facto filing
- Use of normal banking channels
- Pricing valuation prescribed
- E.g. IT/ITes, Service sector, Infrastructure, Manufacturing

Approval Route

- For projects that don't qualify for automatic route
- Application to FIPB
- Preference for projects in high priority industries
- E.g. Defence, broadcasting, single and multi-brand retail etc.

Restricted List

- Agriculture
- Atomic energy
- Lottery business
- Gambling and betting
- Trading in Transferable Development Rights
- Real Estate business
- Manufacturing of Tobacco/Tobacco substitutes

FDI Compliances

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graph TD; A[FDI Compliances] --> B[Automatic Route]; A --> C[Prior Permission]; B --> D[General rule]; C --> E[By exception];
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Automatic Route

General rule

- Inform RBI within 30 days of inflow in Annex (Advance Reporting & KYC)
- Issue shares within 180 days of inward remittance and file FC-GPR within one month thereafter
- Pricing: FEMA Regulations
 - Unlisted – Internationally accepted valuation methodology except initial investment through Subscription of A&MA)
 - Listed – As per SEBI Guidelines
- File Annual Return of Foreign Liabilities & Assets by 31st July every year

Prior Permission

By exception

- Approval of Foreign Investment Promotion Board (FIPB) needed.
- Subsequent procedures are same as under Automatic route

Branch/LO/PO- Snapshot of Provisions

Particulars	Liaison Office	Branch Office	Project Office
Setting-up	Prior RBI Approval	Prior RBI Approval	General Permission subject to certain conditions and reporting within 2 months
Track Record/ Net worth criterion	Profit in immediately preceding 3 years & Net worth of not less than USD 50,000	Profit in immediately preceding 5 years & Net worth of not less than USD 1,00,000	-
Validity Period	Approval for a period of 3 (three) years which can be further renewed	Generally does not have time limit	Timeline as per Contract
Permitted Activities	4 (Four) Activities Permitted. Information collection, market Survey, communication, etc.	8 (Eight) Activities permitted. Local manufacturing or processing (except units in SEZs) & retail trading are not permitted	Execution of Projects only
Funding for local operations	Only out of inward remittances from HO	Out of inward remittances and local earnings	Out of inward remittances and local earnings
Permanent Establishment (PE) exposure	Not regarded as PE under DTAA subject to liaison activities only	Regarded as PE of the Foreign Company under DTAA	Regarded as PE of the Foreign Company under DTAA if activities in India exceeded threshold no of days
Income-tax Act	Not liable to tax. Required to file prescribed particulars - S. 285	Income liable to tax. Required to file Return of Income	Income liable to tax. Required to file Return of Income
Immovable Property	Acquire on lease not exceeding 5 years	Acquire on lease / ownership basis	Acquire on lease / ownership basis

Permitted Activities At a Glance

	Branch Office Schedule -1	Liaison Office Schedule -2
1	Export/Import of goods	Representing in India the parent company/group companies
2	Rendering professional or consultancy services	Promoting export import from/to India
3	Carrying out research work, in which the parent company is engaged	Promoting technical/financial collaborations between parent/group companies and companies in India.
4	Promoting technical or financial collaborations between Indian companies and parent or overseas group company.	Acting as a communication channel between the parent company and Indian companies.
5	Representing the parent company in India and acting as buying/selling agent in India.	
6	Rendering services in Information Technology and development of software in India.	
7	Rendering technical support to the products supplied by parent/group companies.	
8	Foreign airline/shipping company	

Schedule 3- Portfolio Investment Scheme for NRIs For purchase/ sale through Stock Exchanges

- Scheme on both repatriable / non repatriable basis
- Investment in Equity / Convertible Debentures
- Investment in Equity only through stock exchanges
 - Mutual Funds/ IPOs not covered
- Through a designated branch of an AD through account opened under PIS Scheme
- Non-delivery based transaction is not allowed
- Cap on Investment
 - 5% per NRI
 - 10% NRI investment, per company
 - Can be increased to 24% by the company
- Inward remittance or through NRE / FCNR/ NRO account
- Bank to file report of of NRI transactions on daily basis to RBI

Schedule 4- Investment in Shares/ Convertible Debentures by NRIs (Non-Repatriable)

- Scheme on non-repatriable basis
- Investment in chit fund, nidhi company, agricultural / plantation activities, real estate, construction of farm houses or dealing in TDRs not permitted
- Investment without any limit and through any mode (issued whether by public issue or private placement or right issue).
- With effect from 18.06.2015, Investments by NRIs/OCIs / PIOs to be at par with resident investments (Press Note No. 7 of 2015 Series dated 3rd June, 2015.-
Insertion of new Para 3.6.3(vii) in consolidated FDI Policy- Implications?
- No restriction on 'non-delivery' based transaction

Schedule 5- Investment scheme for securities other than shares/ debentures for NRIs (Scheme for NR Investors)

Investment on repatriation basis	Investment on non-repatriation basis
<ul style="list-style-type: none"> • Government dated securities (Other than bearer securities) • Units of domestic mutual funds • Bonds issued by PSUs. • NCDs of a company incorporated in India. • Perpetual debt/ debt capital instruments issued by banks in India. • Shares in PSUs being dis-invested by GOI • Shares & convertible instruments under FDI scheme • Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme 	<ul style="list-style-type: none"> • Government dated securities / Treasury bills • Units of domestic mutual funds • Units of Money Market Mutual Funds • National Plan/Savings Certificates • Non-convertible debentures of a company incorporated in India • Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme • Exchange traded derivative contracts approved by the SEBI, from time to time, out of INR funds held in India, subject to the limits prescribed by the SEBI.

NRIs can invest in exchange traded derivative contracts

Investment only through rupee funds in India and on non-repatriation basis

Investment in Real estate – As FDI or for own use

NRIs are not permitted to invest in small savings or Public Provident Fund (PPF).

Investment in Immovable Properties



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Immovable Property by NRIs

- **Dos for NRIs/PIOs -**
 - Can acquire property for holding/self-use.
 - Can sell the property & repatriate sale proceeds abroad, most of the times.
 - Can rent the property & repatriate funds abroad net of taxes.

- **Don'ts for NRIs/PIOs -**
 - Cannot buy agricultural property, plantations & farm houses.
 - Cannot do Real Estate Trading, or trade in Transferable Development Rights.

Immovable Property by NRIs

- **Dos for Indian Citizens (NRIs) - can transfer immovable property without any approval except as under:**
 - **Non-Agricultural property** can be sold or gifted away to Indian residents & NRIs. (Not to foreigners who are non-residents.)
 - **Agricultural Property** can be sold or gifted, only to **Indian residents.** (even if they are foreign citizens.)
- **Dos for PIO - can transfer immovable property without any approval except as under:**
 - They can sell or gift **non-agricultural property** to an Indian resident or NRI, without any approval.
 - They can sell or gift **agricultural property** only to an Indian citizen & Indian resident.

Immovable Property & Change of Residential Status

- Resident who becomes NR – can continue to hold property in India.
- Can cultivation activities continue?
- Person acquiring foreign citizenship – Can continue to hold property in India.
- Non-resident who become resident – can continue to hold property. Repatriability is lost.

Investment in Real Estate in India by NRIs/PIOs

	Sec/Reg	NRIs	Sec/Reg	PIOs	Sec/ Reg	Others
<u>Hold</u>						Branch In accordance with applicable law Remittances from abroad
All sorts of property including Agricultural Land, Plantation, Farm House	S. 6(5)	Property acquired, held or owned when resident in India or inherited from a person who was resident in India	S. 6(5)	Property acquired, held or owned when resident in India or inherited from a person who was resident in India		
<u>Acquire</u>					Reg. 5	Form IPI has to be filed with RBI within 90 days Diplomatic offices of Foreign Government Remittances from abroad Approval from Ministry of External Affairs
Agricultural Land, Plantation, Farm House	Reg.3(a)	No except Inheritance from PROI/PRII. Restriction on use/ repatriation possible	Reg. 4(c)	No except Inheritance from PROI/PRII Restriction on use/ repatriation possible		
Other Land	Reg.3(a)	Yes	Reg 4(a) 4(c) 4(b)	Purchase Inheritance Gift from NRIs, PIOs & PRII	Reg. 5(a)	
<u>Transfer</u>						Repatriation Allowed
Agricultural Land	Reg.3(b)	Sale or Gift to PRII only	Reg. 4(e)	Sale & gift to PRII who is Citizen of India		
Other Land		Gift, Sale or inheritance to NRIs, PIOs & PRII	Reg. 4(d) 4(f)	Sale to PRII Gift to NRIs, PIOs & PRII		
<u>Repatriation</u>	Reg. 6(a) &(b)	Up to Original Investment in FC and for Residential Property- maximum for 2 houses Balance under US \$ 1 Million Scheme		Up to Original Investment in FC and for Residential Property- maximum for 2 houses Balance under US \$ 1 Million Scheme		

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Bank Accounts/ Deposit by NRI/PIO



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Bank Accounts

Particulars	Foreign Currency (Non-Resident) Account (Banks) Scheme (FCNR(B) Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Non-Resident Ordinary Rupee Account Scheme (NRO Account)
(1)	(2)	(3)	(4)
Who can open an account	NRI/ PIOs (individuals)	NRI/ PIOs (individuals)	Any person resident outside India
Joint account	May be held jointly with resident close relatives	May be held jointly with resident close relatives	May be held jointly with resident close relatives
Nomination	Permitted	Permitted	Permitted
Permitted Currency	Pound Sterling, US Dollar, Japanese Yen, Euro, Canadian Dollar and Australian Dollar	Indian Rupees	Indian Rupees
Repatriable	Repatriable	Repatriable	Not repatriable except for 1) current income 2) under USD 1 million scheme
Type of Account	Term Deposit only	Savings, Current, Recurring, Fixed Deposit	Savings, Current, Recurring, Fixed Deposit
Period for fixed deposits	For terms not less than 1 year and not more than 5 years.	At the discretion of the bank	As applicable to resident accounts.

Status of NRI Bank Accounts in India on Return

- **Ordinary Non-Resident Accounts**
 - These *have* to be converted to resident accounts by banks on return of the account holders to India and consequently becoming resident in India.
- **Non-resident (External) Rupee Accounts:**
 - These can be converted to resident rupee accounts or RFC (Resident Foreign Currency) accounts on becoming resident in India.
- **FCNR (Banks) Account:**
 - These deposits can be converted to resident rupee account or RFC account on maturity at the option of the account holder on his becoming resident in India.

Borrowing & Lending



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Lending by NRI/ PIO

- **Repatriable Basis:**

- Lending in Foreign exchange to resident individual.
 - Non-residents can lend money to resident close relatives (as defined under section 6 of the Companies Act, 1956) in foreign exchange up to us \$ 2,50,000 or its equivalents subject to the following conditions:
 - Loan should be interest-free.
 - Minimum maturity period of loan should be one year.
- Rupee investment in companies through investment in Non-Convertible Debentures offered through Public Offer.

- **Non-Repatriable Basis:**

- Lending in rupees to residents out of funds held in NRE/ NRO/ FCNR
- Period not exceeding 3 years & interest of bank rate + 2% p. a.
- Money lent cannot be used for re-lending.

Borrowing by NRI/ PIO

- ADs are allowed to grant loans against permissible security (other than agricultural or plantation property or farm house)

Conditions on end use

- Loan only for personal / or for own business purposes.
- The loan shall not be utilized for business of Chit fund, Nidhi Company, Agricultural or plantation activities, Real estate business, construction of farm houses; or Trading in TDRs.
- Directives from the Reserve Bank should be duly complied with.
- The loan can not be credited to NRE/FCNR account or remitted abroad.
- The repayment of loan shall be out of remittances from outside India / debit to NRO/NRE/FCNR account / sale proceeds of shares or securities or immovable property against which such loan is granted.

Remittance of Assets



Remittance Facilities for NRI/PIO

- Remittance of Rent, Dividend, Pension, Interest etc. of NRI/PIO (even those who do not maintain an NRO account) is freely allowed on the basis of
 - appropriate certification by a CA that the amount proposed to be remitted is eligible for remittance
 - and that applicable taxes have been paid/provided for.
- NRI/PIO have the option to credit the current income to their NRE (rupee) account provided
 - the AD is satisfied that the credit represents current income of the Non resident account holder and income tax thereon has been deducted / provided for.

Remittance Facilities for NRI/PIO

- Remittance facilities available to both NRIs/PIOs
- Remit upto **USD 1 Million per financial year**, out of the balances held in his NRO account/sale proceeds of assets (inclusive of assets acquired by way of inheritance or settlement) for all bona fide purposes, to the satisfaction of the AD bank,
 - On production of an undertaking by the remitter
 - Documentary evidence in support of inheritance or legacy of assets
 - An undertaking by the remitter
 - Certificate by CA in the prescribed format
- The remittance facility in respect of sale proceeds of immovable property is not available to citizens of -
 - Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan
- The facility of remittance of sale proceeds of other financial assets is not available to citizens of
 - Pakistan, Bangladesh, Nepal and Bhutan

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**N. G. Thakrar & Co
Chartered Accountants**



09.01.2016

