

## **NRI'S GUIDE TO INVESTMENT IN IMMOVABLE PROPERTY AND TAX PLANNING**

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

### **WHO IS A NRI?**

The Foreign Exchange Management Act, 1999 (FEMA) deals with various definitions. It defines a person resident in India and a person resident outside India. The non-resident Indians are classified into three categories

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

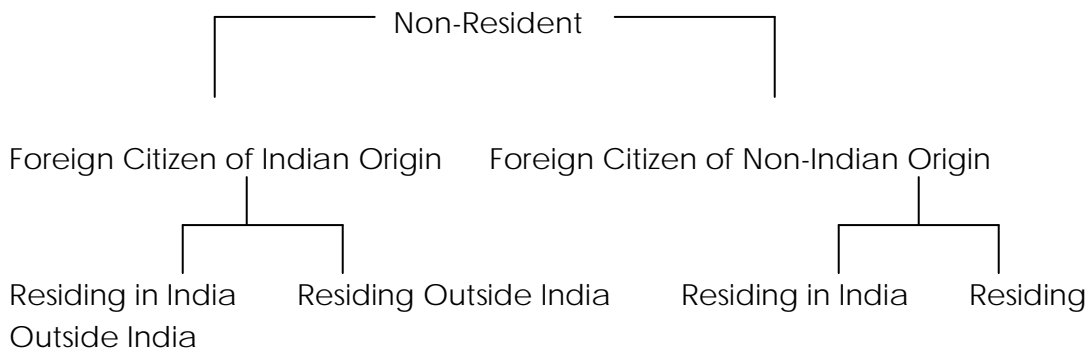
### **Non-Resident Indian National (NRI)**

An Indian Citizen who stays abroad for employment/carrying on business, to pursue a vocation outside India or under circumstances indicating an intention for an uncertain duration of stay abroad is a non-resident.

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

For the purposes of availing of the facilities of opening and maintenance of bank accounts and investments in shares/securities in India, Person of Indian Origin means a citizen of any country other than Pakistan or Bangladesh

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



### **OVERSEAS CORPORATE BODIES (OCB)**

Overseas Corporate Bodies (OCBs) are bodies predominantly owned by individuals of Indian nationality or origin resident outside India and include overseas companies, partnership firms, societies and other corporate bodies which are owned, directly or indirectly, to the extent of at least 60%

by individuals of Indian nationality or origin resident outside India, as also overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons. Such ownership interest should be actually held by them and not in the capacity as nominees. The various facilities granted to NRIs are also available with certain exceptions to OCBs as long as the ownership/beneficial interest held in them by NRIs continue to be at least 60%.

### **INCOME TAX IMPLICATIONS**

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

1. Resident and ordinarily resident (ROR)
2. Resident but not ordinarily resident (RNOR)
3. Non-resident (NR)

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

(Acquisition and Transfer of Immovable Property in India) Regulations,  
**Regulation 3**

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

### **Regulation 4**

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

### **Regulation 5**

It grants general permission to a person resident outside India who has secured RBI permission to establish a branch, office or other place of

business in India (excluding a liaison office) to acquire an immovable property in India which is necessary for or incidental to carrying on the permitted activity.

### **Regulation 6**

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

### **Regulation 7**

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

### **Regulation 8**

It prohibits the transfer of an immovable property in India by a person resident outside India (other than an NRI or a PIO); i.e., a foreigner, without prior permission of RBI.

1. A non-resident who is a citizen of India.
2. A non-resident who is a Person of Indian Origin. (PIO)
3. A non-resident who has established in India a branch office or other place of business (excluding a liaison) office.

### **ACQUISITION BY WAY OF PURCHASE**

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

### **ACQUISITION BY WAY OF GIFT**

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

### **ACQUISITION BY WAY OF INHERITANCE**

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

### **SALE OF IMMOVABLE PROPERTY**

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

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

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

(i) Clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and

(ii) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channel.

### **SALE PROCEEDS**

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

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

Account for the acquisition of the property concerned. Repatriation can be made for a maximum of two residential properties.

### **LOANS FOR ACQUISITION OF IMMOVABLE PROPERTY**

Reserve Bank has granted general permission to certain financial institutions providing housing finance e.g. HDFC, LIC Housing Finance Ltd., etc., to grant housing loans to NRIs for acquisition of a house/flat for self occupation subject to certain conditions. The purpose of loan margin money and the quantum of loan will be at par with those applicable to housing loans to residents. Repayment of loan should be made within a period not exceeding 15 years out of inward remittances or out of funds held in the investor's NRE / FCNR / NRO Accounts.

### **LOAN AGAINST THE SECURITY OF IMMOVABLE PROPERTY**

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

- i) The loan should be used for meeting the personal requirements or for borrower's own business purposes;
- ii) Loan should not be used for prohibited activities, namely; (a) Business of chit fund, or  
(b) Nidhi Company  
(c) Agriculture or plantation activities or in real estate business, or construction of farm houses, or  
(d) Trading in Transferable Development Rights (TDRs), iii) The loan amount cannot be remitted outside India,
- iv) Repayment of loan shall be made from out of remittances from abroad or by debit to NRE/FCNR/NRO account or out of the sale proceeds of shares or securities or immovable property against which such loan was granted.

### **POWER OF ATTORNEY AND NRI**

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

## **TYPES OF POWER OF ATTORNEY**

### **A general power of attorney:**

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

### **A special power of attorney:**

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

## **REGISTRATION OF POWER-OF-ATTORNEY**

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

## **WEALTH TAX PLANNING**

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

taxpayer may own unrestrained value of shares, bank deposits, units, commercial property, industrial property, etc. without paying any wealth tax.

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

#### Example

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

(a) House property on rent for 250 days 4,00,000

(b) Shares in Indian companies 7,00,000

(c) 8% Relief Bonds 8,00,000

(d) Jewellery and cash in hand 9,00,000

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

### **CAPITAL GAINS ON TRANSFER OF IMMOVABLE PROPERTY**

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

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

This section deals with

1. Long Term Capital Gain i.e., assets held for more than 36 months and in case of shares and securities more than 12 months.
2. It applies to all Immoveable properties and other assets.
3. Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.
4. Long Term Capital Gain shall be computed by considering Indexed cost of acquisition and Indexed cost of Improvement.
  - A) Capital Gain on Sale of Immoveable property purchased before April 1, 1981.
    1. Purchase/sale of Plot of Land / Residential House or any other immoveable property

2. Purchase cost Rs. 1,00,000 in April – 1970 (i.e. financial year 1970– 71).

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

3. Sale Price Rs.9,50,000/- in December,2003 (Financial year 2003-04)

4. Fair market value as on April 1, 1981 Rs. 2,00,000/- (as certified by valuation officer) being substituted for cost of acquisition.

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

This section deals with

1. Short Term Capital Gain i.e., gain arises from assets held for not more than 3 years.

2. It applies to all short term assets except shares and debentures of Indian Company. For shares and debentures holding period is not more than 12 months.

3. Capital Gain will arise at the time of transfer i.e., sale, exchange, relinquishment etc.

4. In this case, benefit of Indexation is not available.

### **FILING RETURN OF INCOME**

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

(i) The ROI for Income earned during any April-March period is required to be filed by subsequent July (i.e. for April' 2006-March' 2007 income, you are required to file the ROI by 31st July '2007) provided the Income chargeable to tax exceeds Rs. 100000 being the maximum amount not chargeable to tax for the Financial Year April 2006 to March 2007, unless one is covered by clause (ii) below.

(ii) NRI is not required to file the Return of Income if he has income only from Specified Assets as defined under section 115C of the Income-tax Act, such as dividends, Interest from Debentures/Deposits from public limited companies, Long Term Capital Gains on sale of shares an Indian company and the tax is deducted at source from the Income as per the provisions of Income-tax Act.

(iii) The tax deduction at source for NRI is prescribed at maximum rate in the Income-tax Act. However, the actual liability to tax for the year computed in accordance with the provisions of the Act is generally lower for following reasons:

(iv) Income up to Rs. 100,000 (other than long-term capital gains) earned by NRI is not liable to taxation. However, the tax is deducted at source when Income is received. The Income earned may not be liable to tax but the tax is deducted by the Payer in following cases.

(a) The Capital Losses can be set off against Capital Gains but tax is deducted at source from capital gains without setting off the losses.

(b) The rate of TDS on investment income is 20% (for Assessment year: 2007-2008 i.e. Previous year: 2006-2007) but tax chargeable on Income as per Double Taxation Avoidance Agreements (DTAA) existing with the country where NRI resides may be lower.

(c) The reinvestments of capital gains as prescribed may exempt it from tax but nevertheless the tax is deducted from Capital gains.

(v) In view of above, NRI should file Return of Income if his tax deducted at source is more than his actual tax liability. He is entitled to claim refund of tax with interest at 8% p.a

(vi) Sometimes, NRI may incur capital loss on his investments. He can set off such loss against any capital gain from sale of investments in subsequent year or years provided he has filed Return of Income within prescribed time for the year in which he has incurred loss. Hence the NRI should file Return of Income declaring loss in such a situation.

(vii) NRI may file Return of Income in some years and may not file in some years. But if he receives a notice from the Tax department to file the return of Income, he must respond by filing Return of Income.

(viii) Under the provisions of section 139(1) it is obligatory, for an individual, who satisfies the conditions (i.e. economic criteria) specified therein, to file the Return of Income even though he may not have taxable income. However, NRIs, vide Notification No.S.O.710 (E) date 20-8-98, are exempt from filing the Returns of Income based on economic criteria.

(ix) If Return is not filed within time allowed, you may file Return of that year, at any time within 24 months from the end of that year.

### **TAX CLEARANCE CERTIFICATE**

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

1. Persons who are not domiciled in India, and in whose case the stay in India has exceeded 120 days;

2. Persons of Indian or non-Indian domicile whose names have been communicated to the Airlines/Shipping Companies by the Income Tax authorities;

3. Persons who are domiciled in India at the time of their departure; but i. Intend to leave India as emigrants; or

ii. Intend to proceed to another country on a work permit with the object of taking any employment or other occupation in that country; or

iii. In respect of whom circumstances exist, which in the opinion of the Income

## **TAX CONCESSIONS TO NRI'S**

### **(1) Resident**

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

(i) for a period of 182 days or more; or

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

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

(i) a citizen of India or person of Indian origin who has been outside India and comes on a visit;

(ii) when a citizen of India leaves India for purpose of employment outside India or as a member of a crew of an Indian ship.

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

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

(i) he has not been resident in India in nine out of ten financial years preceding that financial year; or

(ii) has not during the seven financial years preceding that year, been in India for a period of periods of 730 days or more.

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

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

Long Term Capital Gains

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

## **BANK ACCOUNTS FOR NRIS**

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

## **TYPES OF NRI BANK ACCOUNTS**

### **1) NON-RESIDENT(EXTERNAL) RUPEE ACCOUNTS (NRE ACCOUNTS):**

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

### **ELIGIBILITY**

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

### **OPENING OF ACCOUNT**

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

### **TAX BENEFITS**

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

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

These are Rupee denominated non-repatriable accounts and can be in the form of savings, current or term deposits. These accounts can be opened jointly with close relative in India, also. When an Indian National/PIO resident in India leaves for taking up employment, etc. outside the country, his bank

account in India gets designated as NRO account. The deposits can be used to make all legitimate payments in rupees.

### **Eligibility**

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

### **TAXABILITY**

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

### **ACQUISITION OF IMMOVABLE PROPERTY OUTSIDE INDIA**

NRIs can now buy immovable properties in any country outside India and retain them even after their return to India for permanent settlement. In addition the amount lying in the Resident Foreign Currency Account (RFC) can also be utilised after their return to India for the subsequent purchase of immovable property abroad.

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

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

### **PROCEDURE FOR ACQUIRING IMMOVABLE PROPERTY IN INDIA**

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

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

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

Source: [www.allianceindia.co.in/newsite/whitepapers/NRIInvestment.pdf](http://www.allianceindia.co.in/newsite/whitepapers/NRIInvestment.pdf),  
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