

**CAs' Handbook on**

# **OBLIGATIONS AND PRIVILEGES OF NON-RESIDENTS UNDER FEMA**



**Committee on Commercial Laws, Economic Advisory & NPO Cooperative**  
**The Institute of Chartered Accountants of India**

(Set up by an Act of Parliament)  
New Delhi

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Basic draft of this publication was prepared by CA. Kusai Goawala

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## Foreword

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In the dynamic realm of finance and legal practice, Chartered Accountants are essential, as they provide expertise, and are a beacon of trust. As regulations evolve, technologies progress and global markets integrate, the ability to navigate these complexities with precision is crucial. I am happy to note that the Committee on Chartered Accountants of India (CAI) has undertaken this endeavour and developed Commercial Law, Economic Advisory, and NPO Cooperative of the Institute of a publication "**CAs Handbook on Obligations and Privileges of Non-Residents under FEMA**". While the earlier law preceding FEMA was more of regulating the foreign exchange, this law stands for the management of the foreign exchange which was a step further in the globalization and liberalisation of the economy. This publication thoroughly explores the intricacies of FEMA regulations, offering detailed insights and practical guidance. From comprehending legal requirements to applying these laws effectively, this handbook equips professionals with the necessary tools to excel in this critical area of practice.

I extend my heartfelt gratitude to CA. Chandrashekhar Vasant Chitale, Chairman, CA. Prakash Sharma, Vice-Chairman, and other Committee members of the Committee on Commercial Laws, Economic Advisory, and NPO Cooperative for their dedication and expertise in compiling this invaluable resource.

I am confident that this handbook will serve as a cornerstone for practitioners, educators, and students, inspiring a new generation of skilled professionals committed to the highest standards of precision and proficiency in handling FEMA-related matters for Non-Residents.

I encourage all readers to fully utilize this resource and leverage the insights provided within.

Date: June 26, 2024  
Place: Delhi

**CA. Ranjeet Kumar Agarwal**  
President, ICAI



# Preface

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Chartered Accountants (CAs) play a pivotal role in the financial and legal realms, providing essential expertise that underpins the integrity and efficiency of both sectors. Their deep understanding of accounting principles, tax and other laws, and financial regulations enables them to offer critical insights and guidance on financial management, ensuring that businesses comply with legal requirements and maintain accurate financial records. Mastery of FEMA regulations is vital for Chartered Accountants, as it enhances their professional competence and ensures adherence to legal requirements.

This handbook on "Obligations and Privileges of Non-Residents under FEMA" aims to provide Chartered Accountants with in-depth guidance on interpreting and applying FEMA regulations. It underscores the necessity of clear and precise language and a comprehensive understanding of pertinent laws and legal terminology.

The Committee on Commercial Law Economic Advisory and NPO Cooperative (CCLEANC) of ICAI is pleased to introduce this handbook, crafted to address the specific needs of Chartered Accountants. We believe this resource will empower CAs to adeptly manage the complexities of FEMA, enabling them to offer invaluable services to their clients.

I extend my heartfelt gratitude to the leadership of ICAI - CA. Ranjeet Kumar Agarwal, President, ICAI, and CA. Charanjot Singh Nanda, Vice-President, ICAI, for their unwavering support and guidance in publishing this handbook.

My special thanks go to CA. Kusai Goawala, CA. Ammar Goawala, CA. Priyanki Liya, CA. Ganesh Kakade and CA. Pooja Gupta for their significant contributions and insights, which have greatly enriched the content of this handbook. Additionally, I acknowledge the dedication and hard work of CA. Mayur Makadia in reviewing this publication for the benefit of the members.

I would further like to express my gratitude to CA. Prakash Sharma, Vice Chairman, CCLEANC and other members of the Committee for their continuous efforts in the Committee's initiatives. Additionally, I acknowledge the efforts of the Committee's Secretariat for their dedication and hard work in bringing this publication to fruition.

I am confident that the "**CAs' Handbook on Obligations and Privileges of Non-Residents under FEMA**" will serve as an invaluable resource for ICAI members, enhancing their expertise in this critical legal domain.

I commend everyone involved in the creation of this handbook for their continuous efforts.

Wishing you productive learning!

May 27, 2024  
Delhi

**CA. Chandrashekhar Vasant Chitale**  
Chairman, Committee on Commercial Law  
Economic Advisory, and NPO Cooperative



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## Chapter 1

# Introduction

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The Foreign Exchange Management Act, 1999 (FEMA) is an Act of Parliament to consolidate and amend the law relating to foreign exchange to facilitate external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. It was passed on 29 December 1999 in Parliament, replacing the Foreign Exchange Regulation Act, 1973 (FERA).

The Government of India, Ministry of Finance, vide Notification No. GSR (371) (E) dated 1<sup>st</sup> May 2000 has notified that the Foreign Exchange Management Act, 1999 (42 of 1999) shall come into force on the 1<sup>st</sup> day of June 2000. This Act extends to whole of India.

### Importance of FEMA

The Government of India, through the Reserve bank of India of India, manages its foreign exchange reserves. These reserves are crucial for maintaining the balance of payments for the country's imports and meeting its international liabilities. The measures adopted by the Reserve bank of India of India, in conjunction with the government, boost these reserves and ensure continuous confidence of the international market in the country's economy.

### Salient Features of FEMA

- Regulations for transactions between residents and non-residents
- Investment in India by non-residents and overseas investments by Indian residents
- Freely permissible current account transactions subject to reasonable restrictions
- RBI and Central Government control over capital account transactions
- Requirement for the realization of export proceeds and repatriation to India
- Dealing in foreign exchange through 'Authorized Persons' like Authorized Dealers, Money Changers, and Offshore Banking Units

### Applicability

- FEMA 1999 extends to the whole of India.
- In addition, it shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and to any contravention there under committed outside India by any person to whom this Act applies.

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- The scope is thus wide enough because the emphasis is on the words “Owned or Controlled.” Contravention of the FEMA committed outside India including branches, offices, agencies or by a person to whom this Act applies will also be covered by FEMA.

## Key Definitions with Explanation

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### Key Definitions:

1. **“Non-Resident Indian” (NRI):** Non-Resident Indian (NRI) means an individual resident outside India who is citizen of India.

[Source: FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulation, 2017, Clause 2(xxxv)].

2. **“Overseas Citizen of India (OCI)”** means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

[Source: FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulation, 2017, Clause 2(xxxvi)].

3. **“Person Resident Outside India”** means a person who is not resident in India; [Section 2(w) of the Act]

4. **“Person resident in India”** means; a person residing in India for more than 182 days during the preceding financial year but does not include—

- a person who has gone out of India or who stays outside India, in either case.
  - for or on taking up employment outside India, or
  - for carrying a business or vocation outside India, or
  - for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
- a person who has come to or stays in India, in either case, otherwise than:
  - for or on taking up employment in India, or
  - for carrying on in India a business or vocation in India, or
  - for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
  - any person or body corporate registered or incorporated in India,
  - an office, branch or agency in India owned or controlled by a person resident outside India,
  - an office, branch or agency outside India owned or controlled by a person resident in India [Section 2(v) of the Act]

## **Criteria for determining NRI Status – FEMA and Income tax:**

The FEMA Act and the Income Tax Act both define a non-resident person, but they differ in their criteria.

- FEMA is concerned with the intention of stay, whereas Income Tax emphasizes the actual duration of stay. For example, if a person has left India for employment and does not intend to stay in India for the near future, he will be regarded as a non-resident under FEMA. However, for Income Tax purposes, the number of days will need to be calculated. Furthermore, if a non-resident person comes to India for employment, he will be treated as a resident under FEMA. For Income Tax purposes, the number of days criteria will need to be ascertained.
- One more difference is that under the Income Tax Act, an individual has to stay in India for 182 days or more in a financial year to become a resident. However, under FEMA, an individual has to stay more than 182 days in the preceding financial year to be considered a resident. Suppose a person has stayed in India for 182 days only (except in specified cases as mentioned in the definition of "Person resident in India") and is a citizen of India. In that case, he is a non-resident of India as per FEMA, as he has not stayed in India for more than 182 days, and a resident of India as per the Income Tax Act.

### **Status of Non- Resident Indian (NRI) in case of a person going abroad for a job:**

When a Person goes abroad for or on taking up employment or to carry out business or vocation outside India, he/she will be person resident of India till the time he leaves India and until reaches a foreign country. As and when he/she reaches foreign country to take up job or carry business or vocation, he/she will become Non-resident of India (NRI).

### **Status of Non- Resident Indian (NRI) in case of students going abroad for studies:**

While taking up studies, or further advanced courses, students leave India. They may have to accept jobs or seek scholarships to supplement income to meet their financial requirements abroad. As they have to earn and learn, their stay for educational purposes gets prolonged than what is intended while leaving India.

Furthermore, the purport of their argument is that though they are students, they are not dependent on a dominant part of their expenses on remittances from their households in India. Often, they are permitted to work and have to undertake certain related financial transactions. Hence, it is clarified by the RBI wide circular No. A.P. (DIR Series) Circular No. 45 dated December 8, 2003 – *Students stay abroad for more than 182 days in the preceding financial year and their intention to stay outside India for an uncertain period when they go abroad for*

*their studies, they can be treated as Non-Resident Indians (NRIs). This will provide benefits available to a Non-Resident Indian to such students.*

**Instance :**

1. Mr. Raj, who is a citizen of India, has lived in the USA for 200 days in the financial year 2022-23. He resides in India for less than 182 Days in FY 2022-23, and he is citizen of India, hence he is Non-resident of India for FY 2023-24.
2. Mr. Raj, who is a citizen of India, left India on Dec-2022 for employment outside India. He will be considered a Non-Resident once he leaves India as he has left for employment and the criteria for 182 days stays do not arise.
3. Mr. Raj, who is a citizen of India, left India on May-2022 for business outside India. Again, here he will be considered a Non-Resident from the day he leaves India.

**Person of Indian Origin and Overseas Citizen of India:**

In many cases, a Non-Resident Indian acquires citizenship of another country. However, they still have their roots in India as their parents or grandparents were at some point in time or he at some time was a citizen of India. Earlier, under FEMA such persons were called Persons of Indian Origin (PIO) and enjoyed certain privileges under FEMA. This concept has been amended to bring about a new term called Overseas Citizen of India (OCI). Under this banner, a person who acquires citizenship of another country, based on certain criteria, is eligible to obtain a status of OCI and is given an OCI card. This entitles him to certain benefits including visa free entry in India.

**Section 7A of citizenship Act, 1955: Overseas Citizenship:**

- (1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—
- a. any person of full age and capacity, —
    - i. who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or
    - ii. who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or
    - iii. who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August 1947; or
    - iv. who is a child or a grandchild or a great grandchild of such a citizen; or
  - b. a person, who is a minor child of a person mentioned in clause (a); or
  - c. a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or



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- d. spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

Provided further that no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.

- (2) The Central Government may, by notification in the Official Gazette, specify the date from which the existing persons of Indian Origin Cardholders shall be deemed to be Overseas Citizens of India Cardholders.

Explanation.—For the purposes of this sub-section, “Persons of Indian Origin Cardholders” means the persons registered as such under-notification number 26011/4/98 F.I., dated the 19th of August 2002, issued by the Central Government in this regard.

- (3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.

**Notification:** PIO Card holder deemed to be OCI Card holder as per the notification No. F.No. 26011/01/2014-IC dated 09<sup>th</sup> January 2015

- (4) A registered Overseas Citizen of India is granted multiple entry, multipurpose, life-long visa for visiting India, he/she is exempted from registration with the Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India and is entitled to general parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties

### **Difference between Non- Resident Indian and Overseas Citizen of India**

The Key difference between NRI and OCI is a Non- Resident Indian is an Indian Citizen who does not stay in India for more than 182 days, whereas Overseas Citizen of India means an Individual who is citizen of India and/or along with holding citizenship of another country or hold only citizenship of another country; who is the person of Indian origin.

## Difference between Person Resident Outside India and Non-Resident Indian / Overseas Citizen of India:

Person Resident Outside India is any person, whether citizen of India or not. Whereas a Non-Resident Indian means an Individual (only Individual as a person) who is resident outside India and he/she is a citizen of India – both the conditions need to be satisfied.

FEMA provides some more extra facilities/benefits to Non-Resident Indians (Citizens of India who are resident outside India) or Overseas Citizen of India (Persons having roots in India having obtained citizenship of foreign countries and are staying outside India) than other persons resident outside India.

A Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) can acquire property in India. However, a foreign citizen who is not an OCI is not allowed to own property in India except under special circumstances and under approval route only.

## Terms Explained

1. **“Capital Account Transaction”** means a transaction, which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liability in India of persons resident outside India, and includes transactions referred to in Section 6(3); [Section 2(e)]
2. **“Current Account Transaction”** means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,
  - payments due in connection with foreign trade, other current business, services, and 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,
  - expenses in connection with foreign travel, education and medical care of parents, spouse, and children; [Section 2(j)]
3. **“Authorised person”** means an authorized dealer, money changer, offshore banking unit or any other person for the time being authorized under section 10(1) to deal in foreign exchange or foreign securities; [Section 2(c)]
4. **“Export,”** with its grammatical variations and cognate expressions means.
  - the taking out of India to a place outside India any goods.
  - provision of services from India to any person outside India; [Section 2(l)]
5. **“Foreign Currency”** means any currency other than Indian currency; [Section 2(m)]
6. **“Foreign Exchange”** means foreign currency and includes:
  - deposits, credits, and balances payable in any foreign currency,

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- Drafts, traveler's cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
  - Drafts, traveler's cheques, letters of credit or bills of exchange drawn by banks, institutions, or persons outside India, but payable in Indian currency; [Section 2(n)]
7. **"Person"** includes:
- an individual,
  - a Hindu undivided family,
  - a company,
  - a firm,
  - an association of persons or a body of individuals, whether incorporated or not,
  - every artificial juridical person, not falling within any of the preceding subclauses, and.
  - any agency, office or branch owned or controlled by such person; [Section 2(u)]
8. **"Repatriate to India"** means bringing into India the realized foreign exchange and
- a. the selling of such foreign exchange to an authorized person in India in exchange for rupees, or
  - b. the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve bank of India.
- It includes use of the realized amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed; accordingly, [Section 2(y)]
9. **"Service"** means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service; [Section 2(zb)]

### **Capital & Current Account Transactions:**

Capital account transactions for example deal with Investment by a Person resident outside India in an entity in India or investment by a person resident in India in an entity outside India. The capital account transactions will also include borrowings and lending in foreign exchange or rupees between a Person Resident Outside India and Person Resident in India. Transactions of a property in India or abroad is also a capital account transaction. There are several other such capital account transactions which are governed by FEMA regulations. The capital account

transactions should be undertaken between Person Resident in India and Person Resident outside India only in the manner permitted under regulations of FEMA.

Examples of Capital Account transactions will include investments by Person Resident outside India by way of equity of the Indian Entity or by way of lending as debt fundings under ECB route. The investment by Residents in entities outside India are also Capital Account transactions.

Current account transactions are general trade or operating level transactions which include procurement or supply of goods or services from/to outside India, remittances for maintenance and other payments by a person resident in India. FEMA has liberalized to a certain extent current account transactions with certain conditions as specified in the FEM Current Account Regulations.

Current Account transactions will include payments for imports, or receipts for exports, payments of expenses for maintenance, education, medical etc by resident outside India.

Foreign Exchange will also include remittances from outside India in Indian Rupees for example, an exporter has supplied goods to another country. He has a choice of raising invoice either USD or INR. In case of USD, the remittances are received in USD and the Bank converts USD to INR in India. Whereas when an exporter raises an invoice in INR the customer bank buys INR and converts USD to INR in foreign country and remits INR to India. In either case, the amount remitted is foreign currency. Now the only difference is the exchange fluctuation risk, in the first case, the same is on the supplier whereas in the second case it is for the customer.

### **Case Studies:**

#### **Capital Account Transactions:**

1. Mrs. A, Person resident in India - acquiring Immovable Property in Foreign country.
2. Mr. R – person resident in India - Undertake overseas Direct Investment (ODI) – i.e., investment in Foreign entity.
3. Mr. Jazz – Person resident outside India, acquires Immovable property in India/ investment in Indian Entity

#### **Current Account Transactions:**

1. Mr. B makes payment to the vendors – who are non-resident, in foreign currency.
2. Mr. D provides Interior design service to the person outside India for house in foreign country.

## Obligation of Person going Abroad for Job or Business

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A citizen of India going abroad for job or business becomes a non-resident Indian (NRI) for the purpose of FEMA, An individual relocating abroad should keep in mind the following:

**a) Conversion of Bank accounts in India:**

When an individual relocates abroad for job / employment or business it is very important for him to convert his existing resident bank accounts in India to either Non - Resident External (NRE) or Non - Resident Ordinary (NRO) accounts or Foreign Currency (Non-resident) Account (FCNR) account as he cannot maintain resident accounts in India on becoming an NRI.

The NRO and NRE and FCNR accounts have several advantages and disadvantages. He can choose to open any of the mentioned accounts depending on various factors such as source of income, types of transaction he wishes to conduct and tax exemptions on the account. A brief description of the accounts are as follows:

- I. An NRO is a Non-Resident Ordinary rupee account and can be held jointly by two or more NRIs or with a resident Indian. All legitimate dues in India of the account holder, proceeds of remittances received in any permitted currency from outside India through normal banking channels or transfers from rupee accounts of non-resident banks can be credited to this account. Funds remitted, therefore, are non-repatriable to another country and the income from this account is taxable in India,
- II. An NRE is a Non-Resident (External) Rupee account. It permits for money transfer services from outside India, and the entire amount in the account is also repatriable back to the country where the NRI stays currently. Income earned in this account is exempt from taxation.
- III. FCNR is a Foreign Currency (Non-Resident) Account, and NRIs can deposit any foreign currency in it. It has foreign currency fixed or term deposit available for one to five years. There is no tax implication on this type of account, and funds are completely repatriable on maturity.

**b) Intimation to companies where he is a shareholder:**

The individual relocating abroad should inform the companies in which he is a shareholder about his change in residential status. This will allow the companies to make a disclosure of Non-resident shareholders and ensure that compliance with FEMA regulations governing shareholding by NRIs' has been done.

The procedure for an NRI for intimation to companies where shares are held for investment involves several steps:

**Intimation to Companies :**

- Identify Companies where shares are held : Compile a list of companies in which you hold shares for investment purpose.
- Contact the Companies registrar or the company secretary of the company.
- Submit a formal letter informing the companies about your change in residential status from resident to NRI. Includes details such as your name, shareholding details, new NRI status, contact information, and any supporting documents if required.
- Keep track of the communication and follow up with the Companies if required to ensure that your residential status update is processed correctly.

**c) Intimation regarding NRI status to others:**

- I. The individual moving abroad needs to intimate the broking houses, asset management companies, insurance providers etc.
- II. Mutual Funds units should be routed through NRE / NRO Accounts.
- III. The individual should close their Resident Demat Account and open new NRE/NRO Demat Account to continue investing in the stock market. All the securities in the Resident Demat Account should be transferred to the NRI Demat Account. Investments could be on a repatriable (by way of debit to NRE/FCNR(B) account) or a non-repatriable basis (by way of debit to NRO account).

**d) Treatment of loans /overdrafts in the event of a change in the resident status of the borrower.**

In case of a person who had availed of loan or overdraft facilities while resident in India and who subsequently becomes a person resident outside India, the Authorized Dealer/bank may at their discretion and commercial judgement, allow continuance of the loan/overdraft facilities. In such cases, payment of interest and repayment of loan may be made by inward remittance or out of legitimate resources in India of the person concerned.

**e) Remittance of money:**

The Government of India has under a liberalised regime has permitted several remittances under various schemes.

For NRI/OCI a scheme of 1 million USD permits them to remit up to USD 1 Million in a financial year out of their NRO accounts under automatic route.

Similarly for residents, Liberalised Remittance Scheme permits them to remit up to USD 250000 per financial year for various purposes listed in the Scheme.

The details of the above schemes are discussed in detail in next chapters.

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The Individual while moving abroad for employment can draw foreign exchange up to USD 250,000 per year from any Authorized dealer in India as per FED Master Direction No. 7/2015-16 dated January 1, 2016

### **f) Facilities for a person going abroad for studies:**

Persons going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs. Educational and other loans availed of by them as residents in India will continue to be available to them as per FEMA Regulations.

(A citizen of India going abroad for private visits, seminars, tours etc. other than for employment or business)

### **Remittances under the liberalized remittance scheme (LRS):**

1. Any resident individual can remit foreign currency up to USD 250,000/- per financial year for any permitted capital account and current account transactions through an Authorised Dealer/bank. Remittances for the following nature of transactions are covered:
  - Private visits to any country (except Nepal and Bhutan)
  - Going abroad for employment
  - Travel for business or attending a conference or specialised training or for meeting expenses or for meeting medical expenses, or check-up abroad, or for accompanying as an attendant to a patient going abroad for medical treatment/ check-up.
  - Expenses in connection with medical treatment abroad
  - Studies abroad
  - Any other permissible current account and capital account transaction.
2. An individual who has availed of a loan abroad while as a non-resident can repay the same on return to India under the Liberalised Remittance Scheme as a resident.
3. Dance troupes, artists etc. who wish to undertake cultural tours abroad requires prior approval from Ministry of Human Resources Development (Department of Education and Culture), Government of India, New Delhi. (last updated by notification dated October 21, 2021- Miscellaneous forex facilities)
4. The Amount of foreign exchange that can be carried by a resident travelling abroad is as follows: (last updated by notification dated October 21, 2021- Miscellaneous forex facilities).

<b>(i)</b>	Travelers proceeding to countries other than Iraq, Libya, the Islamic Republic of Iran, the Russian Federation, and other Republics of the Commonwealth of Independent States	not exceeding USD 3000/- or its equivalent. Balance amount can be carried in the form of store value
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### Obligation of Person going Abroad for Job or Business

		cards, traveller's cheque, or bank draft
(ii)	Travelers proceeding to Iraq or Libya,	not exceeding US 5000/- or its equivalent
(iii)	Travellers proceeding to the Islamic Republic of Iran, the Russian Federation, and other Republics of the Commonwealth of Independent States	Full exchange can be released up to USD 250,000/- under the LRS scheme

#### 5. International credit card and International Debit Card (IDC) for undertaking foreign exchange transactions.

Authorised Dealers/banks are permitted to issue International Debit Cards, Store Value Cards/Charge Cards/Smart Cards (IDCs) to resident individuals for drawing cash or making payments to a merchant establishment overseas during their visit abroad. IDCs can be used only for permissible current account transactions and the usage of IDCs shall be within the LRS limit of USD 250,000/- per financial year.

#### 6. Foreign cards:

Resident individuals maintaining a foreign currency account with an Authorised Dealer in India or a bank abroad, as permissible under extant Foreign Exchange Regulations, are free to obtain International Credit Cards (ICCs) issued by overseas banks and other reputed agencies. The charges incurred against the card either in India or abroad, can be met out of funds held in such foreign currency account/s of the card holder or through remittances, if any, from India only through a bank where the cardholder has a current or savings account. The remittance for this purpose should also be made directly to the card-issuing agency abroad, and not to a third party. It is also clarified that the applicable credit limit will be the limit fixed by the card issuing banks. There is no monetary ceiling fixed by the RBI for remittances, if any, under this facility. The LRS limit shall not apply to the use of ICC for making payment by a person towards meeting expenses while such person is on a visit outside India.

However, use of ICCs/IDCs is NOT permitted for prohibited transactions indicated in Schedule 1 of FEM (CAT) Amendment Rules 2015 such as purchase of lottery tickets, banned magazines etc. Also, they cannot be used for payments in Nepal and Bhutan.

#### 7. Purchase of foreign currency in cash:

Authorized dealers may accept payment in cash below INR 50,000/- against sale of foreign exchange for travel abroad (for private visits or any other purpose). Wherever the sale of foreign exchange exceeds or equals the amount equivalent to INR 50,000/-, the payment must be received only by a :

- (i) crossed cheque drawn on the applicant's bank account, or



- (ii) crossed cheque drawn on the bank account of the firm/company sponsoring the visit of the applicant, or
- (iii) Banker's Cheque/Pay Order/ Demand Draft.

## **FAQ on LRS**

The Reserve bank of India of India have released frequently answered questions on 6<sup>th</sup> April 2023, which are as follows:

### **1. What is the Liberalized Remittance Scheme (LRS) of USD 250,000?**

Ans. Under the liberalized Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. Further, resident individuals can avail themselves of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of FEM (CAT) Amendment Rules 2015, dated May 26, 2015, within the limit of USD 250,000 only.

The Scheme was introduced on February 4, 2004, with a limit of USD 25,000. The LRS limit has been revised in stages consistent with prevailing macro and micro economic conditions.

In case of remitter being a minor, the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

### **2. What are the prohibited items under the Scheme?**

Ans. The remittance facility under the Scheme is not available for the following:

- Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
- Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.
- Remittance for trading in foreign exchange abroad.
- Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as “non- cooperative countries and territories,” from time to time.
- Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve bank of India of India to the banks.

## **Obligation of Person going Abroad for Job or Business**

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- Gifting by one resident to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

**3. What are the purposes under FEM (CAT) Amendment Rules, 2015, under which a resident individual can avail of foreign exchange facility?**

Ans. Individuals can avail of foreign exchange facility for the following purposes within the LRS limit of USD 250,000 on financial year basis:

- Private visits to any country (except Nepal and Bhutan)
- Gift or donation.
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad
- 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.
- Expenses in connection with medical treatment abroad
- Studies abroad
- Any other current account transaction which is not covered under the definition of current account in FEMA 1999.

The AD bank may undertake the remittance transaction without RBI's permission for all residual current account transactions which are not prohibited/ restricted transactions under Schedule I, II or III of FEM (CAT) Rules, 2000, as amended or are defined in FEMA 1999. It is for the AD bank to satisfy themselves with the genuineness of the transaction, as hitherto.

**4. Under LRS are resident individuals required to repatriate the income earned on investments abroad, over and above the principal amount?**

Ans. The investor who has remitted funds under LRS can retain and reinvest the income earned from his investments made under the Scheme. However, the received/ realised/ unspent/unused foreign exchange, unless reinvested, shall be repatriated, and surrendered to an authorised person within a period of 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of return to India, as the case may be.

Further, any additional repatriation requirement with respect to investments made under Overseas Investments Rules and Regulations 2022 shall also be adhered to.

**5. Can remittances under the LRS facility be consolidated in respect of family members?**

Ans. Remittances under the LRS facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the

Scheme. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account and investment if they are not the co-owners/co-partners of the investment/ overseas bank account. Remittances for acquiring immovable property outside India from a person resident outside India, may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme.

**6. Is the AD required to check permissibility of remittances based on nature of transaction or allow the same based on remitter's declaration?**

Ans. AD will be guided by the nature of transaction as declared by the remitter in Form A2 and will thereafter certify that the remittance is in conformity with the instructions issued by the Reserve bank of India of India in this regard from time to time. However, the ultimate responsibility is of the remitter to ensure compliance to the extant FEMA rules/regulations.

**7. Is it mandatory for resident individuals to have Permanent Account Number (PAN) for sending outward remittances under the Scheme?**

Ans. Yes, it is mandatory for the resident individual to provide his/her Permanent Account Number (PAN) for all transactions under LRS made through Authorized Persons.

**8. Are there any restrictions on the frequency of remittance?**

Ans. There are no restrictions on the frequency of remittances under LRS. However, the total amount of foreign exchange purchased from or remitted through all sources in India during a financial year should be within the cumulative limit of USD 250,000.

Once a remittance is made for an amount up to USD 250,000 during the financial year, a resident individual would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.

**9. Resident individuals (but not permanently resident in India) can remit up to net salary after deduction of taxes. However, if he has exhausted the limit of USD 250,000 as net salary remittance and desires to remit any other income under LRS is it permissible as the limit will be over and above USD 250,000?**

Ans. Resident individuals (but not permanently resident in India) who have remitted their entire earnings and salary and wish to further remit 'other income' may approach RBI with documents through their AD bank for consideration.

**10. Para 5.4 of AP DIR Circular 106 dated June 01, 2015, states that the applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance for capital account transactions. Whether this restriction applies to current account transactions?**

Ans. No. The rationale is that remittance facility for current account transactions under Schedule III of FEM (CAT) Amendment Rules, 2015, such as private and business visits, up to the LRS limit of USD 250, 000 can also be provided by FFCs. As FFCs cannot maintain accounts of remitters, the proviso (as mentioned in para 5.4 of the circular ibid)

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has been confined to capital account transactions. However, FFCs are required to ensure that the "Know Your Customer" guidelines and the Anti-Money Laundering Rules in force have been complied with while allowing the current account transactions.

**11. Are there any restrictions towards remittances to Mauritius and Pakistan for permissible current account transactions?**

Ans. No, there are no restrictions towards remittances for current account transactions to Mauritius and Pakistan.

Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as "non-cooperative countries and territories," from time to time; and remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve bank of India to the banks are not permissible.

**12. What are the requirements to be complied with by the remitter?**

Ans. The individual will have to designate a branch of an AD through which all the capital account remittances under the Scheme will be made. The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance.

For remittances pertaining to permissible capital account transactions, if the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation, and maintenance of the account. Further, the AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained. He has to furnish Form A-2 regarding the purpose of the remittance and declare that the funds belong to him and will not be used for purposes prohibited or regulated under the Scheme.

**13. Can remittances be made only in US Dollars?**

Ans. The remittances can be made in any freely convertible foreign currency.

**14. Are intermediaries expected to seek specific approval for making overseas investments available to clients?**

Ans. Banks including those not having operational presence in India are required to obtain prior approval from Reserve bank of India of India for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

**15. Are there any restrictions on the kind/quality of debt or equity instruments an individual can invest in?**

Ans. No ratings or guidelines have been prescribed under LRS of USD 250,000 on the quality of the investment an individual can make. However, the individual investor is expected to

exercise due diligence while taking a decision regarding the investments which he or she proposes to make and such investments shall be in accordance with Overseas Investment Rules and Regulations, 2022 and the directions made thereunder.

**16. Whether credit facilities (fund or non-fund based) in Indian Rupees or foreign currency can be extended by AD banks to resident individuals?**

Ans. LRS does not envisage extension of fund and non-fund-based facilities by the AD banks to their resident individual customers to facilitate remittances for capital account transactions under LRS.

However, AD banks may extend fund and non-fund-based facilities to resident individuals to facilitate current account remittances under the Scheme.

**17. Can bankers open foreign currency accounts in India for residents under LRS?**

Ans. No.

**18. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?**

Ans. No.

**19. What are the documents required for withdrawal/remittance of foreign exchange for purposes mentioned in para 1 of Schedule III to FEM (CAT) Amendment Rules, 2015?**

Ans. Permanent Account Number (PAN) is mandatory for all transactions under LRS.

**20. Whether documents viz 15 CA, 15 CB have to be taken in all outward remittance cases including remittances for maintenance etc.?**

Ans. In terms of A. P. (DIR Series) circular No. 151 dated June 30, 2014, Reserve bank of India of India will not issue any instructions under the FEMA, regarding the procedure to be followed in respect of deduction of tax at source while allowing remittances to the non-residents. It shall be mandatory on the part of ADs to comply with the requirement of the tax laws, as applicable.

**21. Will the expenses incurred by an LLP to sponsor the education expense of its partners who are pursuing higher studies for the benefit of the LLP be outside the LRS limit of such individuals (partners)?**

Ans. LLP is a body corporate and has a legal entity separate from its partners. Therefore, if the LLP incurs/sponsors the education expense of its partners who are pursuing higher studies for the benefit of the LLP, then the same shall be outside the LRS limit of the individual partners and would instead be deemed as residual current account transaction undertaken by the LLP without any limits.

**22. Clarification on remittance by sole proprietor under LRS.**

Ans. In a sole proprietorship business, there is no legal distinction between the individual / owner and as such the owner of the business can remit USD up to the permissible limit under LRS. If a sole proprietorship firm intends to remit the money under LRS by debiting its current account, then the eligibility of the proprietor in his individual capacity has to be reckoned. Hence, if an individual in his own capacity remits USD 250,000 in a financial year under LRS, he cannot remit another USD 250,000 in the capacity of owner of the sole proprietorship business as there is no legal distinction.

**23. Whether prior approval is required to open, maintain, and hold foreign currency account with a bank outside India for making remittances under the LRS?**

Ans: No.

**24. What are the facilities under Schedule III of FEM (CAT) Amendment Rules, 2015 available for persons other than individual?**

Ans. The following facilities are available to persons other than individuals:

Donations up-to one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for- (a) creation of Chairs in reputed educational institutes, (b) contribution to funds (not being an investment fund) promoted by educational institutes; and (c) contribution to a technical institution or body or association in the field of activity of the donor Company.

Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India up to USD 25,000 or five percent of the inward remittance whichever is less.

Remittances up to 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.

Remittances up to five per cent of investment brought into India or USD 100,000 whichever is less, by an entity in India by way of reimbursement of pre-incorporation expenses.

Remittances up to USD 250,000 per financial year for purposes stipulated under Para 1 of Schedule III to FEM (CAT) Amendment Rules, 2015. However, all residual current account transactions undertaken by such entities are otherwise permissible without any specified limit and are to be disposed of at the level of AD, as hitherto. It is for the AD to satisfy themselves about the genuineness of the transaction.

Anything in excess of above limits requires prior approval of the Reserve bank of India of India.

**25. Can a resident individual make a rupee loan to an NRI/PIO who is a close relative of resident individual, by way of crossed cheque/ electronic transfer?**

## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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Ans. A resident individual is permitted to make a rupee loan to an NRI/PIO who is a close relative of the resident individual ('relative' as defined in Section 2(77) of the Companies Act, 2013) by way of crossed cheque/ electronic transfer subject to the following conditions:

- (i) The loan is free of interest and the minimum maturity of the loan is one year.
- (ii) The loan amount should be within the overall LRS limit of USD 250,000, per financial year, available to the resident individual. It would be the responsibility of the lender to ensure that the amount of loan is within the LRS limit of USD 250,000 during the financial year.
- (iii) The loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes in India.
- (iv) The loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely;
  - The business of chit fund, or
  - Nidhi Company, or
  - agricultural or plantation activities or in real estate business, or construction of farmhouses, or
  - trading in Transferable Development Rights (TDRs).

Explanation: For the purpose of item (c) above, real estate business shall not include development of townships, construction of residential / commercial premises, roads, or bridges.

- (v) The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c.
- (vi) The loan amount shall not be remitted outside India.
- (vii) Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO)/ Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

**26. Can a resident individual make a rupee gift to an NRI/PIO who is a close relative of resident individual, by way of crossed cheque/ electronic transfer?**

Ans. A resident individual can make a rupee gift to an NRI/PIO who is a close relative of the resident individual [relative' as defined in Section 2(77) of the Companies Act, 2013] by way of crossed cheque /electronic transfer. The amount should be credited to the Non-Resident (Ordinary) Rupee Account (NRO) a/c of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c. The gift amount would be within

the overall limit of USD 250,000 per financial year as permitted under the LRS for a resident individual. It would be the responsibility of the resident donor to ensure that the gift amount being remitted is under the LRS and all the remittances made by the donor during the financial year including the gift amount have not exceeded the limit prescribed under the LRS.

### **Case studies:**

**1. Mr. A Resident of India, going to USA for employment. What are the requirements by Mr. A to inform his status of NRI for FEMA purpose?**

Ans. Inform his Bank – to convert his Bank account from normal saving account to NRO/NRE or FCNR account

Intimate to the companies in which he is shareholder – to change the residential status.

Intimate to the companies/agencies in which he is Mutual fund holder.

**2. Mr. B, resident of India, wants to give gift to NRI – what is the limit?**

Ans. Mr. B, being resident of India, can give gift to NRI up to USD 250,000 during the Financial year under Liberalized Remittance Scheme (LRS)

**3. Mr. C, Non-resident Indian (NRI), wants to give gift in foreign currency, what is the limit?**

Ans. Mr. C, being NRI, can remit/ give gifts up to USD 1 Million during the Financial Year.

**4. Mr. J, Resident of India, require foreign currency in cash for going abroad in a tour, how much he can receive from Authorised Dealer?**

Ans. Mr. J can receive Foreign currency equivalents to amount INR 50,000 from authorised dealer for foreign tour by paying to dealer INR through crossed Cheque/ DD.

**5. Mr. M – Person of Indian origin, resident abroad going for employment before a decade, terminating his employment and returning to India, what is the status of Mr. M and what is the limit for remittance?**

Ans. Mr. M – on returning to India to stay for long term, he will become Resident of India at the time of entering India, the limit of remittance is USD 250,000 under LRS Scheme. Now one-million-dollar scheme is not applicable, as he is no longer non-resident Indian.

**6. Mr. O – Person resident outside India – visit temporary to India, what is the residential status of Mr. O?**

Ans. If the intention to stay in India is temporary, he will be continuing to be Non-resident during the visit.

**7. Mr. P – Person of Indian origin, resident abroad going for employment before a decade, terminating his employment and returning to India, what is the obligation to inform residential status?**



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Ans. When a person being Non-resident Indian becomes Resident of India, for the intention to stay in India for long time, his residential status will be changed from Non-resident Indian to Resident of India, and he will have to inform the change in residential status to various authorities:

1. All banks where he is holding bank account in India as NRE/NRO or FCNR Account – will be changed as normal saving account.
2. Intimate to the company where he holds the shares.
3. Intimate to the agencies/companies where he holds mutual funds.
4. All bank account opened outside India, where he is Non-resident Indian, can hold all such account.

## Aspects to be taken care of by Individual Returning to India

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### **NRI Returning back to India:**

#### **Steps to be taken by NRI when he returns back to India:**

**1. Redesignation of bank accounts:**

The NRI returning to India should re designate their NRE/NRO bank accounts in India as Resident accounts, after the change in the status of the bank accounts. The tax exemption of NRE account- related income will not be available.

**2. Intimate the company where he holds shares:**

The NRI returning to India should inform the company where he holds shares to update the resident status.

**3. Liberalised Remittance Scheme instead of the One-million-dollar scheme**

NRI individuals can remit an amount up to USD 1 Million per financial year under the One-million-dollar scheme, On becoming a resident, he can remit USD 250,000/- per financial year under the liberalized remittance scheme.

**4. Understand the rights and restrictions of a resident as per the FEMA Act.**

NRI individuals who have returned to India need to educate themselves of the rights and restrictions of remittance of foreign exchange, purchase of property and other various regulations of FEMA.

**5. Can Open foreign accounts applicable to resident:**

Once the NRI becomes a Resident of India in terms of FEMA, apart from opening resident rupee accounts in India, he can open the following foreign bank accounts:

- a) Exchange Earners Foreign Currency (EEFC) Account
- b) Resident Foreign Currency (Domestic) [RFC(D)] Account
- c) Resident Foreign Currency (RFC) Account

### **Properties, assets, and bank accounts held outside India while he was a non-resident:**

**6.** RBI Notification dated January 9, 2014, provides clarifications regarding Section 6(4) of FEMA, 1999 in terms of which 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

## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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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.

7. A person resident in India may maintain a foreign currency account outside India if he had opened and maintained it when he was resident outside India or inherited it from a person resident outside India.

8. 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.

9. A person resident in India can retain income earned abroad:

- From employment, business, or vocation while such person was resident outside India,
- From investments made while such person was resident outside India,
- From gift or inheritance received while such a person was resident outside India.

10. A person resident in India can 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 for making any fresh investments abroad without approval of Reserve bank of India, provided the cost of such investments and/ or any subsequent payments received there from 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.

### **When a non-resident is on a temporary visit to India:**

Where the Non-resident Indian is only on a temporary visit to India, he shall continue to be treated as non-resident during such visit and the provisions with respect to Non – residents will be applicable.

### **Foreign Nationals who come to India:**

Foreign nationals who come to India on employment and become residents in terms of Section 2 (v) of FEMA, 1999 are eligible to open/hold a resident savings bank account.

On leaving the country after employment they are permitted to re-designate their resident account maintained in India as an NRO account to enable them to receive their legitimate dues subject to certain conditions.

## Remittances abroad by Non-Resident

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FEMA permits remittances to Non-Residents who have either income in India or realisation of their Remittance facilities for Non- Resident Indians vide master circular No. 8/2015-16 dated July 01, 2015, which can be explained as below:

### Types of remittances:

- a. Current Income
- b. Remittance of assets by a foreign national of non-Indian origin
- c. Remittance of assets by NRI/OCI
- d. Remittances from sale of property located in India
- e. Remittance facilities for students
- f. Other remittance

### Remittance of current income:

Current income of NRIs like rent, dividend, pension, interest, etc. are allowed to be remitted even for those individuals who does not maintain NRO account, if it is appropriately certified by Chartered Accountants that amount is eligible for remittance and applicable taxes have been paid/provided for.

If the authorized dealer bank is satisfied that the credit represents current income of non-resident account holder and taxes have been paid/ provided for, NRIs have the option to credit the current income to their Non-Resident (External) Rupee account.

### Remittance of assets by a foreign national of Non-Indian origin:

A retired foreign national of non-Indian origin from employment in India or who has taken over assets from a person resident in India or who is a widow of an Indian citizen who was resident in India may remit an amount up to USD 1 million per financial year, on providing appropriate evidences such as documents for acquisition/ inheritance of assets, an undertaking by remitter and a certificate of Chartered Accountant in the formats prescribed by Central Board of Direct Taxes. These remittance facilities are not available to the citizens of Nepal and Bhutan.

### Remittances of assets by NRI/ OCI:

A Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) may remit an amount up to USD 1 million per financial year out of the balances held in Non Resident (Ordinary) Rupee Account

(NRO account) or sale proceeds of assets, on satisfaction of authorised dealer banks, on providing appropriate evidences such as documents for acquisition/ inheritance of assets, an undertaking by remitter and a certificate of Chartered Accountant in the formats prescribed by Central Board of Direct Taxes.

As mentioned above, NRI may remit sale proceeds of immovable property purchased by him out of the funds or as a person resident in India without any lock in period.

In respect of remittance of sale proceeds of assets inherited or settlement for which there is no lock in period, NRI/OCI may submit appropriate evidence such as documents for inheritance of assets, an undertaking by remitter and a certificate of Chartered Accountant in the formats prescribed by Central Board of Direct Taxes. Settlement is also a mode of inheritance from the parent, the only difference is that property under the settlement passes to the beneficiary on death of the owner/ parent without any legal procedures.

The remittance facility in respect of sale proceeds of immovable property is not available to the citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

In respect of remittances on sale of Property – acquisition price (Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2016 and Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000, the limit in respect of USD 1 Million will not apply.

### **Repatriation of sale proceeds of residential property purchased by NRIs/ OCI**

Repatriation of sale proceeds of residential property purchased by NRI/ OCI is permitted to the extent of the amount paid for the acquisition of property. This facility is restricted to two such properties.

Authorised dealer banks may permit repatriation of amounts representing the refund of application/ earned money/ purchase consideration made by the house building/seller on account of non-allotment of flat/ plot/ cancellation of booking/ details for purchase of residential/ commercial property, together with interest, if any provided the original payment was made out of NRE/ FCNR(B) account of the holder, or remittance from outside India through normal banking channels and the authorised dealer bank is satisfied with the genuineness of the transaction. Such funds may also be credited to NRE/ FCNR(B) account of NRI/OCI, if they desire.

Repatriation of sale proceeds of residential property purchased by NRI/ OCI out of the funds raised by way of loans from authorised dealer banks / housing finance institutions to the extent of such loans repaid by them out of foreign exchange remittances received through normal banking channels or by debit to their NRE accounts.

## Facilities for students

### **Students studying abroad are treated as NRIs and are eligible for all the facilities available to NRIs under FEMA.**

They will be eligible to receive remittances from India:

- 1) up to USD 1,00,000/- from close relatives in India on self-declaration towards maintenance including remittances towards their studies also, however for studies, the limit would be as demanded by the universities abroad; and
- 2) up to USD 1 million per financial year, out of the balances in their account/ sale proceeds of assets.

All other facilities available to NRIs under FEMA are equally applicable to students.

Educational and other loans availed of by them as residents in India will continue to be available as per FEMA regulations.

## Other Remittance

### Income tax clearance

The remittances will be allowed to be made by the authorised dealer banks, on providing appropriate evidence such as an undertaking by remitter and a certificate of Chartered Accountant in the formats prescribed by Central Board of Direct Taxes (Form 15A and Form 15CB – These forms are explained in detail in chapter 10 as to how the same is to be filled up.

### International Credit Cards

Authorised dealer banks can issue international credit cards to NRIs/OCI, without prior approval of Reserve bank of India of India. Such transactions may be settled by inward remittance or out of balance held in cardholder's NRE/NRO accounts.

### Case studies of remittances:

1. In case a Non-Resident Indian has sold a property for INR 16 crore (equivalent to USD 2 Million). The tax on the capital gains on this transaction is 3 crores. The property was acquired by funds remitted from outside India USD 0.5 Million. Now having realised Rs.13 crores equivalent of USD 1.625 Million (net of taxes) out of the above sale, the NRI can remit first USD 0.5 Million under FEM Acquisition of Immovable property regulations to the extent of funds brought in by him for acquiring the property as investment and further USD 1 Million under 1-million-dollar Scheme for remittances from NRO account. So total remittances permissible from 1.625 million realised by him from sale of property will be to the extent of USD 1.5 Million.

2. A Resident gifts a non-resident an amount of INR 4 crores (equivalent to USD 0.5 Million, The NR can repatriate only to the extent of USD 250,000/- under 1-million-dollar Scheme. The gift by a resident to a non-resident cannot exceed USD 250,000/- under Current Account transaction regulations, hence there will be a violation by the Resident to give a gift of more than USD 250,000/- to a non-resident in the first place.
3. The remittances by Non-Resident does not attract TCS u/s 206 of the Income Tax Act, 1961 which is applicable only in case of Liberalised Remittance Scheme applicable to remittances by a Resident.

### **Difference between remittances from NRE account and NRO account**

A Non- Resident External (NRE) account per se is a freely repatriable account and there are no restrictions, and no approval or clearance of Authorised Dealer (AD Bank) is required for remitting funds from the NRE account.

The reason for such a process is that the funds that are deposited in the NRE account are

- (a) the amounts remitted from outside India
- (b) amount of Income earned in India and directly credited to NRE account by following the process of income tax payments and following appropriate procedures for filing Form 15CA and 15CB at the time of deposit of such funds in NRE account and hence the funds once credited become freely repatriable.

To explain the difference between funds in NRE and NRO, an analogy of immigration clearance at an airport can be used.

An NRE account is an account though physically in India is technically outside India whereas a NRO account is physically as well as technically in India.

It is like a person who is travelling abroad, clears immigration and is waiting at the boarding gate. He is although physically in India, technically out of India as "Departure" stamp has been affixed on his passport by Immigration Officer. He is free to move out of India.

In a case where a person is waiting before Immigration clearance, he is physically as well as technically in India as he has to clear immigration to move out of India and is subject to satisfying Immigration Officer about his Bonafede intentions (similar to Authorised Dealer in case of remittances).

### **Care to be taken before effecting remittance abroad:**

In most cases, remittances are made by self-declaration and certifications by Chartered Accountants for tax payments.

It must be verified before remittance that the same is eligible without any prohibition under the regulations.

It is imperative that the eligible remittance can be made only after payment of due taxes in India. For this purpose, the onus is on the certifying Chartered Accountant who certifies in Form 15CB

as to the amount of tax already paid or to be paid before remittance can be affected. The Chartered Accountant should examine the source and nature of income and verify whether the tax as may be applicable as per Indian Income tax Act 1961 is fully paid before issuing Form 15CB.

For Form 15CB, which is a certificate issued by CAs to ensure tax compliance for foreign remittances; the UDIN guidelines of ICAI play a critical role. The Unique Document Identification Number (UDIN) is a mandatory requirement introduced by the Institute of Chartered Accountants of India (ICAI) to enhance the authenticity and traceability of documents certified by Chartered Accountants (CAs).

Every Form 15CB issued by a CA must bear a UDIN, which is generated from the ICAI's UDIN portal. For generating UDIN for 15CB, one must select Certificate in Form 15CB as option for the nature of certificate. The UDIN must be quoted on the Form 15CB before it is submitted to the authorized dealer or bank.

Compliance with these UDIN guidelines is essential to ensure the validity and acceptance of Form 15CB. Non-compliance of UDIN guidelines may attract Disciplinary Proceedings as per Clause 1 of Part II of Second Schedule of the Chartered Accountants Act 1949.

The remittances are post facto monitored by Reserve bank of India of India and any discrepancies found will invite penalties not only for the remitter but also for the Chartered Accountant who certified the payment.

All remittances under the One-million-dollar scheme and under the liberalised remittance scheme should be made from one designated bank account only.



## Acquisition of Property in India by NRI

### Acquisition of Property in India by NRI / OCI

The FEMA, 1999 has empowered the Central Government to prescribe, in consultation with the Reserve bank of India of India, rules pertaining to capital account transactions, not involving debt instruments. The Central Government has, accordingly, notified the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, dated October 17, 2019, as amended from time to time, in supersession of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

Note - These Rules do not apply to the acquisition or transfer of immovable property in India by a person resident outside India on a lease not exceeding five years.

**The purchase, sale and gift of immovable property is summarised as per FAQs – purchase of immovable property updated as on April 06, 2023, as follows:**

NRI / OCI Can -	From / to
Purchase (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(a)]
Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(b)] who is a relative
Acquire (any Immovable Property) as inheritance from	a. Any person who has acquired it under laws in force [24(c)]. b. Resident [24(c)]
Sell (other than agricultural land/ farmhouse/ plantation etc) to	Resident/ NRI/ OCI [24(e)]
Sell (agricultural land) to	Resident [24(d)]
Gift (other than agricultural land) to	Resident/ NRI/ OCI [24(e)]
Gift (agricultural land) to	Resident [24(d)]
Gift residential/ commercial property to	Resident/ NRI/ OCI [24(e)]

### Acquisition of immovable property by NRI

1. An NRI or an OCI can acquire by way of purchase any immovable property (other than agricultural land/ plantation property/ farmhouse) in India.
2. An NRI or an OCI can acquire by way of gift any immovable property (other than agricultural land/ plantation property/ farmhouse) in India from person resident in India or

from an NRI or an OCI who is a relative as defined in section 2(77) of the Companies Act, 2013.

3. An NRI or an OCI can acquire **any** immovable property in India by way of inheritance from a person resident outside India who acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition.
4. An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident in India. That means a Non-Resident child can inherit an agricultural land from a Resident Father.
5. NRIs cannot buy agricultural land, plantation, or farmhouses in India.

### **Transfer of immovable property:**

1. An NRI or an OCI may transfer any immovable property in India to a person resident in India,
2. An NRI or an OCI may transfer any immovable property (other than agricultural land or plantation property or farmhouse) to an NRI or an OCI. In case the transfer is by way of gift, the transferee should be a relative as defined in section 2(77) of the Companies Act, 2013.

### **Payment for acquisition of immovable property:**

NRI / OCIs can make payment for purchase of immovable property in India by the following modes:

1. Funds received in India by way of inward remittances from any place outside India through the banking channels.
2. Funds from the Non-resident accounts of the NRI/OCI i.e., NRE/FCNR (B) / NRO Accounts
3. Payments for purchase of immovable property in India by NRI/OCI cannot be done by travellers' cheque or by foreign currency notes, or by any other mode apart from those specifically mentioned above.

### **Joint acquisition by the spouse of an NRI or an OCI:**

1. A person resident outside India who is not an NRI nor an OCI but is a spouse of an NRI or OCI may acquire only one immovable property (other than agricultural land/ farmhouse/ plantation property), jointly with his/ her NRI/ OCI spouse.
2. An important condition is that the marriage should have been registered and continuing for a continuous period of minimum 2 years immediately preceding the acquisition of such property.
3. The Non-resident spouse should not otherwise be prohibited from such acquisition.

4. Payment for purchase of the immovable property in such cases should be done by:
- Funds received in India by way of inward remittances from any place outside India through the banking channels.
  - From Non-resident accounts of the concerned person - NRE/NRO/FCNR Accounts.
  - Payments cannot be done by traveller's cheque or by foreign currency notes, or by any other mode apart from those specifically mentioned above.

**Acquisition of immovable property in India by a Long-Term Visa holder (LTV) Conditions of the same are as follows:**

- a) A person who is a citizen of Afghanistan, Bangladesh, or Pakistan and,
- b) belonging to minority communities in those countries viz., Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, and,
- c) who is residing in India.
- d) and has been granted a Long-Term Visa (LTV) by the Central Government
- e) can purchase a) **only one** residential immovable property in India as dwelling unit for self-occupation and b) **only one** immovable property for self-employment.
- f) The property should not be located in, and around restricted/ protected areas as notified by the Central Government and cantonment areas.
- g) The person should submit a declaration to the Revenue Authority of the district where the property is located specifying the source of funds and that he/ she is residing in India on a LTV.
- h) The registration documents of the property should mention the nationality and the fact that such person is on a LTV.
- i) The property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities.
- j) A copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division).
- k) Sale of the immovable property so acquired is permissible only after such person has acquired Indian citizenship. However, transfer of such immovable property before acquiring Indian citizenship requires the prior approval of the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned.

## Sale and Repatriation of sale proceeds of immovable property

1. An NRI and an OCI can transfer any immovable property in India (other than agricultural land/ farmhouse / plantation property) by way of sale to a person resident in India.
2. An NRI and an OCI may transfer agricultural land / farmhouse / plantation property in India, by way of gift or sale to a person resident in India, who is a citizen of India.
3. An NRI or an OCI can repatriate the sale proceeds outside India of the immovable property (other than agricultural land/ farmhouse/ plantation property) held in India provided the following conditions are satisfied:
  - The immovable property was acquired by the seller in accordance with the provisions of the Foreign Exchange law in force at the time of acquisition by him.
  - The amount of acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in **FCNR(B) account or NRE account**.
  - In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
4. In case an immovable property in India has been purchased by an NRI or an OCI 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 such person, such repayments may be treated as equivalent to foreign exchange received.
5. A person resident outside India who has acquired immovable property when he was a resident of India or inherited from a person resident in India in accordance with section 6(5) of FEMA (reference para 1.2 of Part II) or through his successor can sell the immovable property however he cannot repatriate the sale proceeds outside India of such immovable property without the prior permission of the Reserve bank of India of India except to the extent of the one million dollar scheme,
6. In the event of failure in repayment of External Commercial Borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, the AD bank may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured **only** to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

## **Points to be kept in mind by an NRI / OCI while Buying / selling property in India:**

To transact in India, NRIs must have a valid PAN (Permanent Account Number). Otherwise, they will be subjected to higher TDS. Similarly, an NRI is expected to file income tax return in India if they have rented out their property. And if the property sold later the capital gains arising out of sale would be subject to capital gain tax and income tax return will have to be filed for that particular year.

- ii. An Aadhar card is not compulsory for OCIs when engaged in property transactions of such as buying and selling. An NRI with an Overseas Citizen of India (OCI) status can proceed with the transaction by having a NRO (Non-Residential Ordinary) account.
- iii. A property owned by NRI/OCI can be given out for rent. The rent received from the property can be repatriated after paying applicable taxes (TDS of up to 30%) in India.
- iv. When an NRI buys or sells residential property in India, the physical presence of both the parties is compulsory to register the transaction. So, if the NRI cannot be present, he/she must appoint someone trusted as the power of Attorney to sign the documents and POA will do so on behalf NRI/OCI.
- v. NRI must pay the applicable taxes including GST on property purchased wherever applicable. When buying residential or commercial under-construction real estate in India, NRI purchasers must pay the same amount of GST as any other buyer.
- vi. In the case of income through the sale of immovable property, NRI or OCI can repatriate the funds after the deduction of tax at source (TDS) (i.e. between 20% and 30% plus Surcharge plus Education Cess), depending on whether it is a short-term or long-term capital gain. The NRI can opt to apply for lower deduction certificate in case where the estimated TDS amounts will exceed the capital gains value.
- vii. For property transfer, the property should be 'transferable'. However, certain properties such as the right to sue, the right to future maintenance, stipends to the air force/navy/political prisoners, and the chance of an heir succeeding to an estate are not transferable.
- viii. As an NRI, you will be required to furnish specific documents during purchase and sale. These documents typically comprise a copy of Indian Passport and Visa, work permit from the country where he/she resides, recent Income Tax Returns and last six month's pay slips.
- ix. Transfer of property has to be routed through banking channel in India only.
- x. Under FEMA no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, or Bhutan without prior permission of the Reserve bank of India of

India shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

- xi. As an NRI/OCI, can purchase a property independently or jointly with another NRI/OCI.

## **FAQ's for Acquisition and Transfer of Property in India**

**1. How the mode of transfer is made for acquisition?**

An NRI or an OCI can acquire any immovable property in India other than agriculture land/ farmhouse/ plantation property a by way of purchase out of funds received by way of inward remittance through normal banking channels or by way of debit to NRO/NRE/FCNR account, payments should not be made through travellers' cheque and foreign currency notes.

**2. Mr. Singh is an NRI whose spouse is a citizen of UK, wishes to purchase 2 units of residential premises jointly with his spouse, is it permissible?**

No, only one immovable property in India is permitted to be acquired for a person resident outside India who is not an NRI, jointly with her NRI spouse.

**3. Mr. Raj, who is an NRI, has sold 2 residential units in India in FY 22-23, whose sale proceeds he had remitted abroad. He now sells another property in India in FY 23-24. He approaches the AD Bank for the remittance of the sale proceeds, is it permissible?**

No, In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

**4. Does any documents are required to be filed with RBI after purchase of Property in India?**

No, documents are required to be filed with RBI, as NRI/OCI can purchase under general permission.

**5. Can a foreign national of non-India origin be a second holder to the immovable property purchased by NRI /OCI?**

No, as he is not eligible to purchase property in India.

**6. Can a foreign national of non-India origin resident outside India purchase immovable property in India?**

No. He cannot purchase any immovable property in India. But he / she can take residential accommodation on lease provided the lease does not exceed for five years. And no permission of RBI is necessary for this.

Citizens of 11 countries i.e., Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Macau, Bhutan, Hong Kong, Democratic People's Republic of Korea regardless of their residential status in India, cannot acquire or transfer immovable

property in India, without prior permission of Reserve bank of India of India. This restriction does not apply to Overseas Citizens of India (OCIs).

**7. Can a foreign national who is resident in India purchase immovable property in India?**

Yes. But he/ she must obtain approvals if any, prescribed by such authorities, state govt etc. But if he/ she is citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, and Bhutan would require prior approval from the RBI. The RBI may consider such request with consultation of the Government of India.

**8. Can a foreign national of non-India origin resident outside India inherit immovable property in India?**

Yes, they can inherit property in India from a person resident in India.

**9. Can an office of foreign national company, purchase immovable property in India?**

Yes, as per the FAQs of Acquisition and Transfer of Immovable Property in India by the Ministry of external affairs. In accordance with the FEMA regulations if a foreign company has established office or other place of business in India can acquire any immovable property in India. The payment for acquiring such a property should be made by way of foreign inward remittance through proper banking channel. A declaration in form IPI should be filed with Reserve bank of India of India within ninety days from the date of acquiring the property. Such a property can also be mortgaged with an Authorised Dealer as a security for other borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of RBI. Further, acquisition of immovable property by entities who had set up Branch Offices in India and incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, and Bhutan would require prior approval of Reserve bank of India of India to acquire such immovable property. However, if the foreign company has established a Liaison Office, it cannot acquire immovable property. In such cases, Liaison Offices can take property by way of lease not exceeding 5 years.

**10. Whether immovable property in India can be acquired by way of a gift?**

An NRI/OCI can freely acquire any immovable property India (other than agricultural land/ plantation property / farmhouse) by way of gift either from i) A person resident in India or ii) An NRI.

**11. Whether a non-resident can inherit immovable property in India?**

Yes, a person resident outside India i.e. i) An NRI ii) An OCI and iii) A foreign national of non - Indian origin can inherit and hold immovable property in India from a person who was resident in India. However, a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan, Macau, Hongkong or Democratic People's republic of Korea (DRPK) should seek specific approval from Reserve bank of India of India.

- 12. What shall be the option if there is a refund of application money/payment made by the building agencies/seller because of non allotment of a flat/plot/cancellation of bookings or contracts?**

The amount of refund, together with interest (net of income tax) can be credited to NRE account. This is subject to the condition that the original payment was made by way of inward remittance or by debit to NRE / FCNR (B) account.

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

Yes, such loans are subject to the terms and conditions as laid down in Schedules 1 and 2 to Notification No. FEMA 5/2000-RB dated May 3, 2000, as amended from time to time. However, banks cannot grant fresh loans or renew existing loans in excess of INR 20 lakh against NRE and FCNR(B) deposits either to the depositors or to third parties [cf. A.P. (DIR Series) Circular No. 29 dated January 31, 2007].

Such loans can be repaid:-

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

**Repatriation :**

- (a) In case the amount has been received from inward remittance or debit to NRE / FCNR (B)/NRO account for acquiring the property or for repayment of the loan, the principal amount can be repatriated outside India. For this purpose, repatriation outside India means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency.
- (b) In case the property is acquired out of Rupee resources and/or the loan is repaid by close relatives in India (as defined in Section 6 of the Companies Act, 1956), the amount can be credited to the NRO account of the NRI/. The amount of capital gains, if any, arising out of sale of the property can also be credited to the NRO account. NRI are also allowed by the Authorised Dealers to repatriate an amount up to USD 1 million per financial year out of the balance in the NRO account for all Bonafide purposes to the satisfaction of the authorised dealers, subject to tax compliance.



**14. Can an NRI, avail of housing loan in rupees from an authorised dealer or housing finance institution in India approved by the National Housing Bank for purchase of residential accommodation or for the purpose of repairs/renovation/improvement of residential accommodation? How can such a loan be repaid?**

Yes, as per the FAQs of Acquisition and Transfer of Immovable Property in India by the Ministry of External affairs – The NRI can avail of housing loan in rupees from an Authorised Dealer or housing finance institution subject to certain terms and conditions. (Please refer to Regulation 8 of Notification No. FEMA 4/2000-RB dated 3.5.2000 and AP. (DIR) Series Circular No. 95 dated April 26, 2003). Such a loan can be repaid (a) by way of inward remittance through normal banking channel or (b) by debit to his NRE / FCNR (B) / NRO account or (c) out of rental income from such property. (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

**15. Can an NRI avail of housing loan in rupees from his employer in India?**

Yes, as per the FAQs of Acquisition and Transfer of Immovable Property in India by the Ministry of External affairs- subject to certain terms and conditions (Please refer to Regulation 8A of Notification No FEMA 4/2000-RB dated May 3, 2000, and AP. (DIR Series) Circular No.27 dated October 10, 2003

**16. Can an NRI/OCI repatriate the sale proceeds of immovable property? If so, what are the terms?**

An NRI/ OCI may repatriate the sale proceeds of immovable property in India, provided following conditions are satisfied:

- (a) The immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him
- (b) If the property was acquired out of foreign exchange sources i.e. remitted through normal banking channels by debit to 'NRE I FCNR (B) account The amount to be repatriated should not exceed the amount paid for the property: 1. in foreign exchange received through normal banking channel or 2. by debit to NRE account (foreign currency equivalent, as on the date of payment) or debit to FCNR (B) account.
- (c) Repatriation of sale proceeds of residential property purchased by NRI/ OCI out of foreign exchange is restricted to not more than two such properties.

If the property was acquired out of Rupee sources, NRI or OCI may remit an amount up to USD one million, per financial year, out of the balances held in the NRO account (inclusive of sale proceeds of assets acquired by way of inheritance or settlement), for all the bonafide purposes to the satisfaction of the Authorized Dealer bank and subject to tax compliance.

However, there are exceptions:

A foreign citizen (excluding Citizens of Nepal, Bhutan) who has inherited property from a person resident in India under U/s 6(5) of FEMA or retired from employment in India or is a non-resident widow/ widower inheriting assets from a deceased Indian National spouse residing in India can repatriate the sale proceeds of the property up to US \$1 Million without RBI approval. In all other cases, individuals are required to obtain RBI approval for the transfer and repatriation of Sales Proceeds

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

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

**18. Can an NRI inherit agricultural land or receive agriculture land as a gift in India ?**

An NRI can acquire agricultural land in India by way of gift or inheritance from relative who is a resident who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition, in fact even foreign nationals of non-Indian origin resident outside India can acquire agriculture property in India by way of inheritance from a resident.

**19. Can NRI sell agriculture land ?**

He may transfer agricultural land/ plantation property / farmhouse acquired by way of inheritance, only to Indian citizens permanently residing in India.

**Case Studies**

**1. Mr. Raj has a family agricultural land in India, he has shifted permanently to London for business in 1997, In 2024 he wishes to sell his agriculture land and remit the money abroad for use in his business.**

Ans. Mr. Raj can sell his agricultural land to a resident in India only, further he cannot repatriate the funds abroad as it is on account of sale of agricultural land.

**2. Mr. Rahul had purchased 5 residential properties in India when he was a Resident of India, He has now shifted to USA for business, he wishes to sell all his residential properties in India to a person resident in India and repatriate the proceeds to USA.**

Ans. Mr. Rahul has become an NRI, he can sell residential properties held in India, however he cannot repatriation of the proceeds is restricted to 2 residential properties.

**3. Mr. Peter is a citizen of USA of non - Indian origin, he is contemplating whether to purchase commercial property in India in his own name or through his company in USA which has an office in India,**

## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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Ans. A foreign citizen of non - Indian origin cannot purchase property in India, however if his company having an office in India, the company can purchase an immovable property by making remittance from USA through banking channels, however a declaration needs to be filed with RBI within ninety days of acquiring the property. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of Reserve bank of India of India.

## Gifts, Borrowings and Lending by NRI in Foreign Currency and Indian Rupee

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### Gift from an NRI

The guidelines given under the Foreign Exchange Management Act, 1999 which talks about gifts involving NRI are,

- An NRI or Overseas Citizen of India (OCI) can gift a resident through their NRO or NRE account in the form of a remittance.
- The power of attorney of these accounts cannot give a gift to a resident. The transaction must be made by the NRI/ OCI account holder only.
- NRI/ OCIs can gift cash to residents, but a resident cannot hold more than USD 2000/- or equivalent at any given time.

Gift in relation to immovable property: (covered extensively in Chapter 6, Acquisition of Property in India by NRI)

- A Resident individual can open a Resident Foreign Currency account to retain foreign exchange received as gift or inheritance from a person referred to in Sec 6(4) of FEMA.
- An NRI/ OCI can gift (other than agricultural land) to a resident/NRI/OCI Rule 24(e) of NDI.
- An NRI/ OCI can gift agricultural land to a Resident Rule [24(d)] of NDI.
- An NRI/OCI can gift residential / commercial property to a Resident/NRI/OCI [24 (e)] of NDI.

### Gift to an NRI

Here's what you must know about gifts received by an NRI from a resident Indian -

- Under the Liberalised Remittance Scheme, a Resident can give gift to NRI only to the extent of USD 250,000/- per financial year.
- Monetary gifts to NRIs can be made to their NRO account only.
- Securities gifted cannot be more than 5% of the company's paid-up capital. Cash gifts cannot exceed INR 2 lakh.
- An NRI / OCI can acquire a gift (other than agricultural land / farmhouse/plantation etc from a Resident/NRI/OCI who is a relative [(Rule (24b)] of NDI\* (covered extensively in Chapter 6, Acquisition of Property in India by NRI)

\*Note: NDI - Foreign Exchange Management (Non-Debt Instrument) Rules, 2019

## **FEMA requirements**

The guidelines given under the Foreign Exchange Management Act, 1999 about gifts involving NRI are:

- An NRI or Overseas Citizen of India (OCI) can gift a resident through their NRO or NRE account in the form of an inward remittance.
- The power of attorney of these accounts cannot give a gift to a resident. The transaction must be made by the NRI/ OCI account holder only.

## **Case Studies**

1. Mr. Sharma is a resident of India, his son is studying in USA, he wishes to remit money to him for his use in USA, how can he remit the funds.

Mr. Sharma can give a sum of up to USD 250,000 per financial year under the liberalized remittance scheme, he needs to submit form 15CA, 15CB and form A2 to the bank to make the remittance.

2. Mr. Singh, a person resident in India has a residential property in India, he wishes to gift his property to his son who has become an NRI in USA.

Yes, an NRI can acquire an immovable property (other than agricultural land/ farmhouse/ plantation etc.) as a gift from a Resident in India.

## **Borrowing from outside India in Foreign Exchange by a Person Resident in India**

- a. **Borrowing by authorised dealer**
- b. **Borrowing by Persons other than authorised dealer**

We will discuss the second point, which is borrowing by persons other than authorised dealer :

- i) Eligible resident entities may raise ECB from outside India in accordance with the provisions contained in Schedule I
- ii) Trade Credit may be raised from outside India by importers for the import of capital or non-capital goods as permissible under the extant Foreign Trade Policy of the DGFT in accordance with the provisions contained in Schedule II.

A person resident in India may borrow, whether by way of loan or overdraft or any other credit facility, from a bank situated outside India, where export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, provided the terms and conditions stipulated by the authority which has granted the approval to the arrangement are in accordance with the Foreign

## **Gifts, Borrowings and Lending by NRI in Foreign Currency and Indian Rupee**

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Exchange Management (Export of goods and services) Regulations, 2015, notified vide Notification No. FEMA.23(R)/2015-RB dated January 12, 2016, as amended from time to time.

- iii) Financial Institutions, set up under an Act of the Indian Parliament, may raise foreign exchange borrowings with the prior approval of the Government of India for the purpose of onward lending. Explanation: Such borrowings, which are in the nature of ECB, shall be subject to provisions contained in Schedule I.
- iv) An individual resident in India may borrow a sum not exceeding USD 250,000/- or its equivalent, or any other amount as decided by the Reserve bank of India of India from time to time, from his/her relatives outside India and subject to such terms and conditions as specified by the Reserve bank of India of India from time to time in consultation with the Government of India.
- v) An individual resident in India studying abroad may raise loan outside India not exceeding USD 250,000/- or its equivalent, or any other amount as decided by the Reserve bank of India of India from time to time, for the purposes of payment of education fees abroad and maintenance subject to terms and conditions as specified by the Reserve bank of India of India from time to time in consultation with the Government of India.

### **Lending in Foreign Exchange by a Person Resident in India:**

- a) Lending by an Authorised Dealer in India or its branch outside India
- b) Lending by persons other than Authorised Dealer

Eligible resident entity may extend foreign currency denominated ECL to a borrower outside India in accordance with the provisions contained in Schedule III.

### **Borrowing in Indian Rupees by a Person Resident in India:**

- a. Borrowing by an Authorised Dealer
- b. Borrowing by persons other than Authorised Dealer

### **Borrowing by persons other than Authorised Dealer**

- i) Eligible resident entities may raise Rupee denominated ECB from outside India in accordance with the provisions contained in Schedule I.
- ii) Eligible resident entities, as defined by the Government of India, may borrow from overseas Multilateral Financial Institutions/International Development Financial Institutions, where the source of funds of such institutions is Rupee denominated bonds issued overseas or resources raised domestically, or any other source as approved by the Government of India.

## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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- iii) Trade Credit may be raised from outside India in Indian Rupees by importers for import of capital or non-capital goods as permissible under the extant Foreign Trade Policy of the DGFT in accordance with the provisions contained in Schedule II.
- iv) Any foreign investment in the nature of debt arising out of transfer or issue of security, not covered under the above sub-regulations, should be in compliance with Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, notified vide Notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017, as amended from time to time.
- v) Any person resident in India accepting any deposit from, or making any deposit with, a person resident outside India, including loans/ overdrafts against security of funds held in such accounts, should be in compliance with Foreign Exchange Management (Deposit) Regulations, 2016, notified vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016, as amended from time to time.
- vi) A person resident in India, not being a company incorporated in India, may borrow in Indian Rupees from an NRI/Relatives who are OCI Cardholders outside India, subject to such terms and conditions as specified by the Reserve bank of India of India from time to time in consultation with the Government of India. The borrower should ensure that the borrowed funds are not used for restricted end uses.
- vii) Financial Institutions, set up under an Act of the Indian Parliament, may raise Rupee denominated borrowings from outside India with the prior approval of the Government of India for the purpose of onward lending. Explanation: Such borrowings which are in the nature of ECBs shall be subject to provisions contained in Schedule I.

### **Lending in Indian Rupees by a Person Resident in India**

- Lending by Authorised Dealer
- Lending by persons other than Authorised Dealer
  - i. A registered non-banking financial company in India or a registered housing finance institution in India or any other financial institution as may be specified by the Reserve bank of India of India from time to time, may provide housing loan or vehicle loan, as the case may be, to an NRI/OCI Cardholder subject to such terms and conditions as prescribed by the Reserve bank of India of India from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.
  - ii. An Indian entity may grant loan in Indian Rupees to its employee who is an NRI/OCI Cardholder in accordance with the Staff Welfare Scheme subject to such terms and conditions as prescribed by the Reserve bank of India of India from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.

### **Gifts, Borrowings and Lending by NRI in Foreign Currency and Indian Rupee**

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A resident individual may grant Rupee loan to an NRI/OCI Cardholder relative within the overall limit under the Liberalised Remittance Scheme subject to such terms and conditions as prescribed by the Reserve bank of India of India from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.



## Bank Accounts in FEMA

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### **Types of Bank accounts in India can be opened by non - Resident Indians:**

- a) Non-Resident Ordinary Rupee Account Scheme (NRO Account)
- b) Non - Resident External Rupee Account Scheme (NRE Account)
- c) Foreign Currency (Non - resident) Account (FCNR Account)
- d) Special Non - resident Rupee Account (SNRR Account)

### **Non-Resident Ordinary Rupee Account Scheme (NRO Account):**

- a) This account is maintained in Indian rupees.
- b) This Can be opened by any person resident outside India for entering into bonafide transactions in Indian Rupees.
- c) They can be in the nature of Savings, Current, Recurring, Fixed Deposit accounts
- d) Credits to NRO Account:
  - Collection of any legitimate dues in India of the account holder – e.g. trade receivables, rent receivables
  - Proceeds of remittances received in any permitted currency from outside India through normal banking channels. E.g. income earned in foreign country can be transferred to the NRO Account
  - Transfer from other NRO Accounts of the non-resident
  - Rupee gift/ loan made by a resident to An NRI relative within the limits prescribed under the Liberalised Remittance Scheme of Rupees USD 250,000.
  - Sale proceeds of assets including immovable property acquired out of rupee/foreign currency funds or by way of legacy/inheritance.
- e) Debits from NRO Account:
  - For making local payments in India.
  - Transfer to NRE Accounts or foreign bank account of current rent, dividend, pension, interest etc. earned in India by the account holder- however under the one-million-dollar scheme and the banks may also for a 15CA and 15CB certificate for this remittance.
  - Transfer to other NRO Accounts.

- f) Funds once received in this account from NRE, or foreign accounts are non – repatriable and cannot be repatriated to any other country.
- g) Amount received from current income and balance in NRO Account can be remitted to NRE accounts or foreign bank accounts under the one -million-dollar scheme
- h) Income from this account is taxable in India.
- i) A citizen of a foreign state, not being a citizen of Nepal or Bhutan, who has retired from an employment in India, or has inherited assets from a person referred to in sub-section (5) of Section 6 of the FEMA; or is a widow resident outside India and has inherited assets of her deceased husband who was an Indian citizen resident in India, may remit an amount, not exceeding USD one million per financial year out of the balances in the account, on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter and an undertaking by the remitter and 15CB certificate by a Chartered Accountant.
- j) An NRI may remit an amount, not exceeding USD one million per financial year, out of the balances held in NRO accounts / sale proceeds of assets / the assets in India acquired by him by way of inheritance / legacy, on production of documentary evidence in support of acquisition, inheritance, or legacy of assets by the remitter, and an undertaking by the remitter and 15CB certificate by a Chartered Accountant.
- k) NRI may remit current year income like rent, dividend, pension, interest etc from his NRO account over and above the limit prescribed in the one million dollar scheme.
- l) NRI may also, within the overall limit of USD one million, as stated above, remit sale proceeds of assets acquired under a deed of settlement made by either of his parents or a close relative (as defined in Section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler, on production of the original deed of settlement and an undertaking by the remitter and a 15CB certificate by a Chartered Accountant.
- m) 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.
- n) NRO (current/savings) account can be opened by a foreign national of non-Indian origin visiting India, with funds remitted from outside India through banking channel or by sale of foreign exchange brought by him to India. The balance in the NRO account may be converted by the Authorised Dealer bank into foreign currency for payment to the account holder at the time of his departure from India provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon. In case the account has been maintained for a period more than six months, applications for repatriation of balance will have to be made by the account holder concerned on plain paper to the Regional Office concerned of the Reserve bank of India of India.

- o) Authorised Dealer banks have been permitted to issue International Credit Cards to NRIs, without prior approval of Reserve bank of India of India. Such transactions may be settled by inward remittance or out of balances held in the cardholder's FCNR (B) / NRE / NRO Accounts

**Non-Resident (External) Rupee Account Scheme (NRE Account):**

- a) This is a bank account of the NRI/ OCI maintained in Indian rupees.
- b) This Can be opened by NRI and OCIs,
- c) They can be in the nature of Savings, Current, Recurring, Fixed Deposit accounts ,
- d) Credits in this account:
- Inward remittance from outside India,
  - Interest accruing on the account,
  - Interest on investment,
  - Transfer from other NRE/ FCNR(B) accounts,
  - maturity proceeds of investments (if such investments were made from this account or through inward remittance),
  - Current income from India like rent, dividend, pension, interest etc.
  - Transfer from NRO Accounts under the one-million-dollar remittance scheme.
- e) Debits to the Account:
- local disbursements in India.
  - Remittance outside India without any limit.
  - Transfer to other NRE/ FCNR(B) accounts.
  - investments in India.
- f) Funds received in this account from outside India are repatriable.
- g) Income from this account is not taxable in India.

**Foreign Currency (Non-resident) Account (FCNR Account):**

- a) This is a foreign currency bank account.
- b) This Can be opened by NRI and OCIs
- c) This account is in the nature of Term Deposit Account for a period of 1 to 5 years.
- d) Credits in this account: (Same as NRE Account)
- Inward remittance from outside India,
  - Interest accruing on the account,

- Interest on investment,
  - Transfer from other NRE/ FCNR(B) accounts,
  - maturity proceeds of investments (if such investments were made from this account or through inward remittance),
  - Current income from India like rent, dividend, pension, interest etc.
  - Transfer from NRO Accounts under the one-million-dollar remittance scheme.
- e) Debits to the Account (Same as NRE Account):
- Local disbursements in India
  - Remittance outside India without any limit
  - Transfer to other NRE/ FCNR(B) accounts.
  - Investments in India.
- f) Funds received in this account from outside India are repatriable.
- g) Income from this account is not taxable in India.

**Special Non-resident Rupee Account:**

- a) This account is maintained in Indian rupees.
- b) Any person resident outside India, having a business interest in India, can open a Special Non-Resident Rupee Account (SNRR account) with an authorised dealer for the purpose of putting through bona fide transactions in rupees which are in conformity with the provisions of the Act, rules and regulations made thereunder.
- c) These are non - interest bearing accounts.
- d) Credits and Debits to this Account: Debits and credits specific/ incidental to the business proposed to be done by the account holder.
- e) Funds received in this account from outside India are repatriable.
- f) With a view to promote the usage of INR products by persons resident outside India, it has been decided, in consultation with the Government of India, to a permit person resident outside India to open such account in lieu of sending inward/outward remittances in a convertible foreign currency for each transaction with a resident or vice-versa for the following specified transactions:
- External Commercial Borrowings in INR,
  - Trade Credits in INR,
  - Trade (Export/ Import) Invoicing in INR and
  - Foreign investments.

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- Business related transactions outside International Financial Service Centre (IFSC) by IFSC units at GIFT city like administrative expenses in INR outside IFSC, INR amounts from sale of scrap, government incentives in INR, etc. The account will be maintained with bank in India (outside IFSC)
- g) These specified transactions should be carried out only if recording and reporting of such transactions under FETERS can be undertaken apart from other FEMA compliances by the AD bank maintaining the SNRR Account.
- h) The transactions under the Liberalized Remittance Scheme (LRS) are not permitted to be routed through the SNRR account.
- i) The transfer from NRO account to SNRR account are prohibited.
- j) SNRR to SNRR A/c transfers are permitted only between SNRR A/Cs of same non-resident person for the purpose for undertaking different categories of transactions such as trade, ECB, Trade credits, etc. Such transfers will not form part of FETERS reporting.
- k) Any remittance of money by a domestic company to the SNRR Account of a foreign company will require furnishing a form A2 to the bank.
- l) The non-resident entity holding SNRR Accounts cannot remit the money to the offshore accounts of other non - resident entities, the non-resident entity holding the SNRR account can only remit eligible receipts/payments to his own offshore accounts.
- m) The AD Bank is responsible for ensuring the FEMA compliances for trade transactions :
  - Inward remittances received for export payments by Indian company from the SNRR Account of the foreign company will be treated as export proceeds and the AD bank handling the export documents shall ensure compliance with all export related rules/regulation/ guidelines prescribed under FEMA.
  - The AD bank maintaining SNRR account shall be responsible for performing due diligence of the overseas client and related FEMA compliances. Further, it shall, while transferring the funds to the AD bank of the Indian exporter (beneficiary's bank), provide complete KYC details of the account holder (Name, address, country etc.), purpose of remittance, currency and amount of remittance, name, and account number of the beneficiary etc. so as to enable the latter to close the entries in EDPMS with the respective remittance.
  - Outward remittance sent for import payment by a Resident to the SNRR Account of the foreign company will be treated as import payments and the AD bank handling import documents and remitting funds (Importer's Bank) shall ensure compliance with all related import rules/regulations/guidelines prescribed under FEMA.
  - It shall also communicate all details related to the importer as required by the AD bank maintaining the SNRR account of the overseas client.

## Bank Accounts in FEMA

- Similarly, in the case of ECB, Trade credits, foreign investments, etc., the designated AD bank maintaining the resident customer's A/c will be responsible for ensuring compliance with FEMA provisions, including issuance of FIRC, wherever applicable, on the same lines as it would have done in case of money received in freely convertible currency through an inward remittance. Further, the banks involved in the transaction shall be responsible for sharing of the details of the transactions on similar lines as above.

The differences and similarities of the 4 bank accounts are as follows:

Particulars	Non-Resident (External) Rupee Account Scheme [NRE Account]	Foreign Currency (Non- Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]	Special Non- resident Rupee Account:SNRR Account
	(1)	(2)	(3)	(4)
<b>Who can open an account</b>	NRIs and OCI (hence foreign citizens are excluded)		Any person resident outside India for putting through bonafide transactions in rupees. (he may be a foreign citizen)	Any person resident outside India, <b>having a business interest in India</b> , can open a Special Non-Resident Rupee Account (SNRR account) with an authorised dealer for the purpose of putting through bona fide transactions in rupees which are in conformity with the provisions of the Act, rules and regulations made thereunder. SNRR account

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				has been allowed to be used for specified transactions in trade, foreign investments, External Commercial Borrowings, etc., in lieu of sending inward/outward remittances by a person resident outside India in a convertible foreign currency for each transaction with a resident or vice-versa
	Individual/entities of Pakistan and Bangladesh shall require prior approval of the Reserve bank of India of India			
<b>Joint account</b>	May be held jointly in the names of two or more NRIs/ OCIs. NRIs/ OCIs can hold jointly with a resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013). The resident relative can operate the account as a Power Of Attorney holder during the lifetime of the NRI/ OCI account holder.		Not Applicable	
<b>Currency</b>	Indian Rupees	Any permitted currency i.e. a foreign currency which is freely convertible	Indian Rupees	Indian Rupees
<b>Type of Account</b>	Savings, Current, Recurring, Fixed Deposit	Term Deposit only	Savings, Current,	Non-Interest-Bearing Account

**Bank Accounts in FEMA**

			Recurring, Fixed Deposit	
<b>Tenure</b>	From one to three years, However, banks are allowed to accept NRE deposits above three years from their Asset-Liability point of view	For terms not less than 1 year and not more than 5 years	As applicable to resident accounts.	Concurrent to the tenure of the contract / period of operation / the business of the account holder and in no case should exceed seven years, other than with approval of the Reserve bank of India
<b>Permissible Credits</b>	<p>Credits permitted to this account are inward remittance from outside India, interest accruing on the account, interest on investment, transfer from other NRE/ FCNR(B) accounts, maturity proceeds of investments (if such investments were made from this account or through inward remittance). Current income like rent, dividend, pension, interest etc. will be construed as a permissible credit to the <b>NRE account</b> provided the Authorised Dealer is satisfied that the credit represents current income of the NRI/OCI account holder and income tax thereon has been deducted/ paid/ provided for.</p> <p>Care: Only those credits which have not lost repatriable character</p>		<p>Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permissible credits to NRO account.</p> <p>Rupee gift/ loan made by a resident to An NRI/ OCI relative within the limits prescribed under the Liberalised Remittance Scheme may be credited to the latter's NRO account.</p>	specific/ incidental to the business proposed to be done by the account holder



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<p><b>Permissible Debits</b></p>	<p>Permissible debits are local disbursements, remittance outside India, transfer to other NRE/ FCNR(B) accounts and investments in India.</p>	<p>The account can be debited for the purpose of local payments, transfers to other NRO accounts or remittance of current income abroad.</p> <p>Apart from these, balances in the NRO account cannot be repatriated abroad except by NRIs and OCIs up to USD 1 million, subject to conditions specified in Foreign Exchange Management (Remittance of Assets) Regulations, 2016.</p> <p>Funds can be transferred to NRE account within this USD 1 Million facility.</p>	<p>specific/ incidental to the business proposed to be done by the account holder</p>
<p><b>Repatriability</b></p>	<p>Repatriable</p>	<p>Not repatriable except for all current income. Balances in an NRO account of NRIs/ OCIs</p>	<p>Repatriable</p>

**Bank Accounts in FEMA**

		are remit able up to USD one million per financial year (April-March) along with their other eligible assets.	
<b>Taxability</b>	Income earned in the accounts is exempt from income tax and balances exempt from wealth tax	Taxable	Taxable
<b>Loans in India</b>	<p>AD can sanction loans in India to the account holder/ third parties against the security of the funds held in NRE accounts without any limit, subject to usual margin requirements. These loans cannot be repatriated outside India and can be used in India only for the following purposes:</p> <ul style="list-style-type: none"> <li>• Personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business.</li> <li>• Making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies subject to the provisions of the relevant Regulations made under the Act.</li> <li>• Acquiring flats / house in India for his own residential use subject to the provisions of the relevant regulations made under the Act.</li> </ul> <p>In case of loans sanctioned to a third party, there should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident</p>	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. The term "loan" shall include all types of funds based/ non-fund-based facilities.	Not Applicable

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	<p>individual/ firm/ company to obtain such facilities.</p> <p>In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from outside India through banking channels or out of balances held in the NRO account of the account holder.</p> <p>The facility for premature withdrawal of deposits will not be available where loans against such deposits are availed of.</p> <p>The term "loan" shall include all types of funds based/ non-fund-based facilities.</p>		
<b>Loans outside India</b>	<p>Authorised Dealers may allow their branches/ correspondents outside India to grant loans to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements.</p> <p>The term "loan" shall include all types of funds based/ non-fund-based facilities</p>	Not permitted	Not Applicable
<b>Rate of Interest</b>	As per guidelines issued by the Department of Regulation		Non-Interest Bearing
<b>Operations by Power of Attorney in favour of a resident</b>	<p>Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.</p>	<p>Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income</p>	Not Applicable

**Bank Accounts in FEMA**

			to the account holder outside India or remittance to the account holder himself through normal banking channels. While making remittances, the limits, and conditions of repatriability will apply.	
<b>Change in residential status from Non-resident to resident</b>	NRE accounts should be designated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts, at the option of the account holder, immediately upon the return of the account holder to India for taking up employment or on change in the residential status.	On change in residential status, FCNR (B) deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by the account holder. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder.	NRO accounts may be designated as resident accounts on the return of the account holder to India for any purpose indicating his intention to stay in India for an uncertain period. Likewise, when a resident Indian becomes a person resident outside India, his existing resident account should be designated as NRO account.	Same as NRO Account

**Three types of foreign bank accounts can be opened by resident individuals:**

- a) Exchange Earners Foreign Currency (EEFC) Account
- b) Resident Foreign Currency (Domestic) [RFC(D)] Account
- c) Resident Foreign Currency (RFC) Account

**Exchange Earners Foreign Currency (EEFC) Account:**

- a) This account can be opened by any resident person for trade – for receiving considerations for exports or professional fees or by rendering any such services and for making payments for imports.
- b) This Account is in nature of a current account.

**Resident Foreign Currency (Domestic) [RFC(D)] Account:**

- a) This account can be opened only by a resident individual, to retain in a bank account in India the foreign exchange acquired in the form of currency notes, bank notes and traveller's cheques from overseas sources.

**Resident Foreign Currency (RFC) Account:**

- a) This account can be opened only by a resident individual, to retain foreign exchange received on account of
  - 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 July 8, 1947, or any income arising on it held outside India with RBI permission
  - Foreign exchange received as earnings of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company
  - Balances in NRE/ FCNR (B) accounts on change in residential status

## Bank Accounts in FEMA

The differences and similarities between the 3 bank accounts are as follows:

Particulars	Exchange Earners Foreign Currency (EEFC) Account	Resident Foreign Currency (Domestic) [RFC(D)] Account	Resident Foreign Currency (RFC) Account
	(1)	(2)	(3)
Who can open the account	Exchange Earners	Individuals	Individuals
Purpose of opening account	For trade – import and export and receipt of professional fees or other similar earnings received by a professional by rendering services in his individual capacity	A resident individual may open an RFC(D) account to retain in a bank account in India the foreign exchange acquired in the form of currency notes, bank notes and travellers' cheques from overseas sources such as those mentioned in permitted credits and debits point below.	A person resident in India is permitted to open a RFC account with an AD bank in India out of foreign exchange received or acquired by him out of the permissible credits as mentioned in the permitted credits point below.
Joint account	Jointly with eligible persons. or With resident relative(s) on former or survivor' basis. Relative as defined under Companies Act, 2013 (viz. members of HUF, spouse, parents, stepparents, son, stepson, daughter-in-law, daughter, son-in-law, brother/sister, stepbrother/ stepsister) Relative joint account holder cannot operate the account during the lifetime of the account holder	Jointly with eligible persons	Same as EEFC

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Type of Account	Current	Current	Current/ savings/ term deposits
Interest	Non-interest earning	Non-interest earning	De-regulated (As decided by the AD bank)
Permitted Credits	<ol style="list-style-type: none"> <li>1) 100% of foreign exchange received on account of export transactions.</li> <li>2) Advance remittance received by an exporter towards export of goods or services</li> <li>3) Repayment of loans given to foreign importers</li> <li>4) Disinvestment proceeds on conversion of ADR/ GDR</li> <li>5) professional earnings like director's/ consultancy/ lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity</li> <li>6) Interest earned on the funds held in the account</li> <li>7) Re-credit of unutilised foreign currency earlier withdrawn from the account</li> <li>8) Payments received in foreign exchange by an Indian startup arising out of sales/ export made by the startup or its overseas subsidiaries</li> </ol>	<ol style="list-style-type: none"> <li>1) Foreign exchange received as payment/ service/ gift/ honorarium while on visit abroad or from a non-resident who is on a visit to India</li> <li>2) Unspent amount of foreign exchange acquired from AD for travel abroad</li> <li>3) Gift from close relative</li> <li>4) Earning through export of goods/ services, royalty</li> <li>5) Disinvestments proceed on conversion of shares into ADR/ GDR</li> <li>6) foreign exchange received as earnings of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company</li> </ol>	<ol style="list-style-type: none"> <li>1) Foreign exchange received by him as superannuation/ other monetary benefits from overseas employer</li> <li>2) Foreign exchange realised on conversion of the assets referred to in Sec 6(4) of FEMA</li> <li>3) Gift/ inheritance received from a person referred to in Sec 6(4) of FEMA</li> <li>4) Foreign exchange acquired before the July 8, 1947, or any income arising on it held outside India with RBI permission</li> <li>6) Foreign exchange received as earnings of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company</li> <li>7) Balances in NRE/ FCNR (B) accounts on change in residential status</li> </ol>

## Bank Accounts in FEMA

Permitted Debits	1) Any permissible current or capital account transaction 2) Cost of goods purchased 3) Customs duty 4) Trade related loans and advances 5) payment in foreign exchange to a person resident in India for supply of goods/ services including payments for air fare and hotel expenditure	Can be used for any permissible current/ capital account transactions.	No restrictions on utilisation in/ outside India.
Change of Residential status	Balances held in the account may be credited to NRE/ FCNR (B) Accounts, at the option/ request of the account holder's consequent upon change of their residential status from resident to non-resident.	Balances may be credited to NRE/ FCNR (B) Accounts, at the option/ request of the account holder's consequent upon change of their residential status from resident to non-resident.	The balances in the Non-Resident External (NRE) Account and Foreign Currency Bank [FCNR (B)] Account can be credited to the RFC account when the residential status of the non-resident Indian (NRI) or OCI changes to that of a Resident.

### Some foreign bank accounts can be opened for residents of India for specific purposes as per the Master Direction 14/2015-16 – Deposits and Accounts:

#### a) Diamond Dollar Account (DDA) Scheme – DDA Account:

Firms and companies which comply with the eligibility criteria stipulated in the Foreign Trade Policy of the Government of India may open DDA accounts, details of which are laid down in Schedule II of FEMA 10(R), as amended from time to time, with an AD in India. The salient features of this scheme are:

- For realization of export proceeds and local sales (in USD) of rough, cut, polished diamonds; and pre and post shipment finance availed in USD.



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- Payments for purchase of rough, cut, and polished diamonds can be made from the DDA account. Funds can also be transferred to the rupee account of the exporter.
  - The accounts should be maintained in the form of a non-interest-bearing current account.
- b) Indian agent of shipping or airline companies incorporated outside India can maintain foreign currency account in India for meeting the local expenses of the overseas company. The credits permitted to such accounts are freight or passage fare collections in India or from his principal outside India.
- c) Ship-manning/ crew managing agencies in India may maintain non-interest-bearing foreign currency account in India for the purpose of undertaking transactions in the ordinary course of their business as detailed:
- Credits: Only by way of inward remittances through normal banking channels from the overseas principal.
  - Debits: Towards various expenses in connection with the management of the ships/ crew in the ordinary course of its business.
  - No credit facility (fund-based or non-fund based) should be granted against security of funds held in the account.
  - The bank should meet the prescribed Reserve Requirements in respect of such accounts.
  - No EEFC facility should be allowed in respect of the remittances received in the account.
  - The account will be maintained only during the validity period of the agreement.
- d) Project Offices of foreign companies can open non-interest bearing one or more foreign currency accounts in India for the project to be executed in India. Such accounts will be subject to the following conditions:
- The Project Office has been established in India, with the general/ specific permission of Reserve bank of India, having the requisite approval from the concerned Project Sanctioning Authority,
  - The contract under which the project has been sanctioned, specifically provides for payment in foreign currency,
  - Each Project has only one Foreign Currency Account.
  - Debits: Payment of project related expenditure.
  - Credits: Foreign currency receipts from the Project Sanctioning Authority, and Remittances from parent/ Group Company abroad or bilateral/ multilateral international financing agency.

- The Foreign Currency account should be closed at the completion of the Project.
  - Inter-project transfer of funds will be permitted with the prior permission of the Regional Office of the Reserve bank of India of India under whose jurisdiction the project office is situated.
- e) Organisers of international Seminars, Conferences, Conventions, etc. – can open temporary foreign currency accounts in India subject to the following conditions:
- Credits: All inward remittances in foreign currency towards registration fees payable by overseas delegates, grant, sponsorship fees and donations, received from abroad, in connection with the conference, convention, etc.
  - Debits: (i) Payment to foreign/ special invitees attending the conference, etc., on the specific invitation of the organisers, towards travel, hotel charges, etc., and honorarium to foreign guest speakers; (ii) Remittance towards refund of registration fees to foreign delegates and unutilised sponsorship/grant amount, if any; (iii) Bank charges, if any; (iv) Conversion of funds into rupees.
  - All other credits/ debits would require the prior approval of the Reserve bank of India.
  - The account should be closed immediately, after the conference/event is over.
- f) An exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank in India, provided that approval as required under the Foreign Exchange Management (Export of goods and services) Regulations, 2015, as amended from time to time has been obtained for undertaking the contract/ project/ export of goods or services, and the terms and conditions stipulated in the letter of approval have been duly complied with.
- g) A unit located in a Special Economic Zone (SEZ) ,may open hold and maintain a foreign currency account with an authorized dealer in India to credit all foreign exchange funds received by the unit.
- The account can be used for bona fide trade transactions between the unit and a person resident in/ outside India.
  - Foreign exchange purchased in India against rupees cannot be credited to the account without prior permission from the Reserve bank of India .
  - The balances in the accounts are from the restrictions imposed under Rule 5, of Foreign Exchange Management (Current Account Transaction) Rules, as amended from time to time, except for the use of the balances for gift etc.
  - The funds held in these accounts cannot be lent or made available to any person or entity resident in India not being a unit in Special Economic Zones.

- h) An Indian company receiving foreign investment under FDI route in terms of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 dated October 17, 2019, as amended from time to time, may open and maintain a foreign currency account with an Authorized Dealer in India provided the Indian investee company has impending foreign currency expenditure and the account is closed immediately after the requirements are completed or within six months from the date of opening of such account, whichever is earlier.
- i) Re-insurance and Composite Insurance brokers registered with Insurance Regulatory and Development Authority of India (IRDA) may open and maintain non-interest-bearing foreign currency accounts with an AD bank in India for the purpose of undertaking transactions in the ordinary course of their business.

### Money Transfer Service Scheme (MTSS)

- (a) Reserve bank of India of India has introduced MTSS for the purpose of facilitating inward remittances from individuals residing abroad to their relatives in India. It is a quick and easy way of transferring funds from out of India to beneficiaries in India. This can also be used by Foreign Tourist visiting India. No outward remittance can be made under this Scheme.
- (b) Under this Scheme, authorised Overseas Principles outside India transfers funds through its authorised Agents in India.
- (c) Strict norms are followed for approving and recognising such Overseas Principles and Indian Agents for the above Scheme.
- (d) This Scheme cannot be used for investing in shares or property in India.
- (e) The detail of the Scheme is provided by RBI in Master Direction bearing no 1/16-17 dated 22.2.2017 duly updated on 29.2.2024.

### Questions

#### A) Accounts in India by Non-residents – As per the FAQ's published by the RBI on 12<sup>th</sup> February 2020

- 1) **In what form can a foreign currency account in India be opened?**
  - a) **Individual resident:** Can open and maintain the above-mentioned account in the form of current account, savings account, or term deposits.
  - b) **Other than Individual:** Can open and maintain the above-mentioned accounts in the form of current account or term deposits.
- 2) **When can a resident individual open a foreign currency account outside India?**

A resident individual can open a foreign currency account with a bank outside India in the following cases:

- a) A resident student who has gone abroad for studies for the period of stay abroad. All credits to the account from India should be made in accordance with FEMA and the rules and regulations made thereunder. On the student's return to India after completion of studies, the account will be deemed to have been opened under the Liberalised Remittance Scheme (LRS).
- b) A resident who is on a visit to a foreign country for the period of stay abroad. The balance in the account should be repatriated to India on return of the account holder to India.
- c) A person going abroad to participate in an exhibition/trade fair for crediting the sale proceeds of goods. The balance should be repatriated to India within one month from the date of closure of the exhibition/ trade fair.
- d) The following persons for remitting/receiving their entire salary payable to them in India:
  - A foreign citizen resident in India, who is an employee of a foreign company and is on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India.
  - An Indian citizen who is an employee of a foreign company and is on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India; and
  - A foreign citizen who is a resident in India and is employed with an Indian company.
- e) For the purpose of sending remittances under the Liberalized Remittance Scheme

**3) Can a resident continue to maintain an account outside India which was opened by him when he was a non-resident?**

A person resident in India may maintain a foreign currency account outside India if he had opened it when he was resident outside India or inherited it from a person resident outside India.

**4) What is the status of the account held outside India on the demise of the account holder?**

A resident nominee of an account held outside India has to close the account and bring back the proceeds to India through banking channels.

**B) Foreign Currency Accounts by Resident Individuals - As per the FAQ's published by the RBI on 1st August 2016**

**1) What are the accounts that a tourist visiting India can open?**

An NRO (current/ savings) account can be opened by a foreign national of non-Indian origin visiting India, with funds remitted from outside India through banking channel or by

sale of foreign exchange brought by him to India. The balance in the NRO account may be paid to the account holder at the time of his departure from India provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

**2) What are the deposits that foreign Diplomatic missions/ personnel and their family members in India can hold?**

The following accounts are permitted:

- a) Foreign diplomatic missions and diplomatic personnel and their family members in India may open rupee deposits with an AD Bank.
- b) Diplomatic missions and diplomatic personnel can open special rupee accounts namely Diplomatic Bond Stores Account to facilitate purchases of bonded stocks from firms and companies who have been granted special facilities by customs authorities for import of stores into bond, subject to conditions. The funds in the account may be repatriated outside India without the approval of Reserve bank of India.
- c) Diplomatic missions, diplomatic personnel, and non-diplomatic staff, who are the nationals of the concerned foreign countries and hold official passport of foreign embassies in India can open foreign currency accounts in India. The account may be held in the form of current or term deposit account, and in the case of diplomatic personnel and non-diplomatic staff, may also be held in the form of savings account. Such accounts can be credited by way of inward remittances and transfers (which are collected in India as visa fees) from the rupee account of the diplomatic mission in India. Funds held in such an account if converted in rupees shall not be converted back into foreign currency. The funds in the account may be repatriated outside India without the approval of Reserve bank of India.

**3) Can persons resident in Nepal and Bhutan have accounts in India?**

Person's resident in Nepal and Bhutan can open Indian rupee accounts with an authorised dealer in India.

**4) Can multilateral organisation have deposits in India?**

Any multilateral organization, of which India is a member nation, or its subsidiary/ affiliate bodies and officials in India can open deposits with an authorised dealer in India.

**5) Can an Indian company accept deposits from non-residents in compliance with section 160 of the Companies Act, 2013?**

Yes, such acceptance of deposit and refunds, if required, will be covered under current account transactions, and can be made freely without any restriction from FEMA regulations perspective.

**6) Can a Foreign Portfolio Investor or a Foreign Venture Capital Investor open a foreign currency account in India?**

Yes, a Foreign Portfolio Investor or a Foreign Venture Capital Investor, both registered with the Securities and Exchange Board of India (SEBI) under the relevant SEBI regulations can open and maintain a non-interest-bearing foreign currency account for the purpose of making investment in accordance with Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

**7) Who can open an Escrow Account in India and for what purpose?**

Resident and Non-resident acquirers can open Escrow Account in INR with an AD bank in India as the Escrow Agent, for acquisition/transfer of capital instruments/convertible notes in accordance with Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 as amended from time to time and subject to the terms and conditions specified under Schedule 5 of Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

**Examples:**

- 1. Mr. Raj is an NRI who is currently based in United States of America, sells his inherited property in India, he wishes to remit the money to his USA Bank account – How can he go about the same?**

**Answer:**

- a) The Sale proceeds will be credited in his NRO Account
  - b) The buyer will deduct TDS as specified u/s 195, he may opt to obtain lower deduction certificate from the Income Tax Department if he estimates his TDS to be more than the tax liability on the capital gain.
  - c) If the tax liability is more than the TDS deducted, he should pay the balance tax and file the income tax return in India
  - d) Once the income tax is paid either by TDS or self-assessment, he can transfer the money to his NRE Account or directly to his foreign bank account up to the limit of 1-million-USD per financial year
  - e) For the above remittance he will have to produce 15CA certificate duly signed by him and 15CB certificate certified by a Chartered Accountant, to the bank.
  - f) If the amount is transferred to his NRE Account from the NRO account under the one-million-dollar USD limit per year, he may remit the amount to his foreign bank account without any limit and without further requirement of 15CA and 15CB.
- 2. Mr. Kapoor is a resident of India whose daughter is studying in London, he wishes to gift her daughter, who is currently an NRI a sum of USD1 million.**

**Answer:**

- a) Since Mr. Kapoor is a resident and his daughter is currently a non – resident, a resident individual can only remit an amount of 250,000 USD per financial year under the liberalized remittance scheme.
  - b) Hence Mr. Kapoor can only gift and remit USD 250,000 to her foreign currency account in a financial year along with furnishing 15CA/15CB certificate from a Chartered Accountant to the bank.
- 3. Mr. Salah is a foreign citizen, He wishes to open a bank account in India, which account can he open?**

**Answer:**

- a) Mr. Salah can open a NRO Account in India for entering into Bonafide transactions in Rupees.
  - b) He can open a Special Non-resident Rupee Account (SNRR Account) in India for conducting business transactions in India.
- 4. Mrs. Kapoor has earned interest in her NRE account and NRO account, she finds that tax has been deducted (TDS) by the bank on the interest in NRO account and not in the NRE account. She wants to know whether TDS deduction is correct.**

**Answer:**

- a) Interest on NRE Account is exempt from income tax hence tax has not been deducted (TDS) by the bank.
  - b) Whereas the interest on NRO account is taxable hence tax has been deducted (TDS) by the bank.
- 5. XYZ Limited is a company in India whose major business is Import-export, The business is being adversely impacted on account of foreign exchange losses, how can such Foreign Exchange risks be protected?**

**Answer:**

- a) The company can open an Exchange Earners Foreign currency Account (EEFC) and can receive export proceeds in foreign currency which can be utilized to make the import payments.
- 6. What happens to the foreign currency account on the death of the foreign currency holder?**

**Answer:**

- a) The authorized dealer with whom the account is held or maintained may remit to a nominee being a person resident outside India, funds to the extent of his share or entitlement from the account of the deceased account holder.

- b) A nominee being a person resident in India, who is desirous of remitting funds outside India out of his share for meeting the liabilities abroad of the deceased, may apply to the Reserve bank of India of India for such remittance.
- c) Resident nominee of an account held outside India in accordance with Regulation 5 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015, dated January 21, 2016, (viz., paragraph 4 of Part I of this Master Direction) must close the account and bring back the proceeds to India through banking channels.



## Investment in Portfolio, Mutual Funds, Shares, and Debentures in India by NRI

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- The Foreign Exchange Management Act has laid down a set of compliances and requirements to be adhered to by the Non – Resident Indians for making investment in India.
- It is imperative for NRIs to understand these regulations to ensure they are not subject to penalties for non-compliance. This chapter provides a comprehensive overview of the FEMA regulations, focusing on the compliance requirements and the penalties for non-compliance that NRIs may face.
- Schedule 3,4 and 5 of the Notification No. FEMA 20/2000 RB contains provisions relating to portfolio investment by NRIs, investments in shares and securities in India, investments in other than shares and securities in India.
  - a) Schedule 3 Purchase/sale of shares and/or convertible debentures by an NRI /OCB on a Stock Exchange in India on repatriation and/or non-repatriation basis. (OCB not permitted, refer note below)
  - b) Schedule 4: Purchase and sale of shares/convertible debentures by a Non-resident Indian (NRI) or an Overseas Corporate Body (OCB), on non-repatriation basis (OCB not permitted, refer note below)
  - c) Schedule 5: Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India.

Note:-OCBs are not allowed to make fresh investments in India under the Portfolio Investment Scheme vide Notification No. FEMA 46 dated 29th November 2001. Further, in September 2003, RBI has banned OCBs from investing in any manner in India. In fact, the category of OCB has been abolished. However, they can continue to hold and sell shares purchased before 29<sup>th</sup> November 2001.

### Portfolio investments and investments in Mutual funds

#### Repatriable and Non-Repatriable Investments: Two types of portfolio investments:

1. **Repatriable Investments:** NRIs can invest in Indian mutual funds and portfolios using money repatriated from abroad. These investments are freely movable, which includes that the principal amount along with their capital gains can be invested in India, such investments made with the repatriated funds are known as repatriable investments.

## **Investment in Portfolio, Mutual Funds, Shares, and Debentures in India by NRI**

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Mode of investment on Repatriation basis:

- inward remittances in foreign exchanges through normal banking channels,
- out of funds in FCNR/NRE account maintained in India.

Repatriation of Sale/Maturity Proceeds:

- Sales proceeds of Investment held on repatriation basis can be credited to NRE/FCNR/NRO account or can be remitted abroad after payment of applicable taxes.

### **Non-Repatriable Investments:**

NRIs can also invest in Indian mutual funds and portfolios with the money kept in their NRO (Non-Resident Ordinary) accounts or money earned in India. Such investments made with the Indian funds are known as non-repatriable investments.

Non-Repatriable Investments do not allow any further repatriation of the funds abroad.

1. Mode of investment on non-repatriation basis:
  - out of NRO account,
  - inward remittances through normal banking channels,
  - out of FCNR/NRE account.
  - out of (Non-resident Non repatriable account) NRNR
2. Repatriation of Sale/Maturity Proceeds:
  - Sale proceeds can be credited to NRO account.
3. Key-Terms and conditions and compliances:
  - One bank branch must be designated by NRIs for making the investments and all purchase/sale must be routed through that designated bank branch only.
  - All transactions of sales and purchase must be delivery based. Speculative transactions are not allowed.
  - Ceiling on Investment:
    - a. Per investor (Each NRI)
      - ✓ 5% of the paid-up value of shares of an Indian Company on both repatriation and non-repatriation basis
      - ✓ 5% of the value of each issue of convertible debenture of an Indian Company on both repatriation and non-repatriation basis.
    - b. Per investee Company (Total holding by all NRIs put together on both repatriable as well as non-repatriable basis.)
      - ✓ 10% of paid-up value of shares of an Indian Company.
      - ✓ 10% of paid-up value each series of convertible debenture.

This ceiling of 10% can be increased to 24% if a special resolution is passed by the general body of the Indian company to give effect to the same.

#### **4. KYC Compliance:**

1. NRIs need to comply with the complete KYC procedures notified by RBI/FEMA regulatory, in which NRI has to provide the following documents:
  - a. identity proof of the investor
  - b. address proof of the investor
  - c. other necessary documents of the investor.
2. This process is usually conducted by the investment brokers or the mutual fund companies itself.

#### **5. Designated Depository Participant (DDP):**

1. As we know, the KYC documents are to be maintained by brokers or mutual fund companies itself, to comply with this requirement NRIs have to transact through a designated depository participant for holding their securities or mutual fund units in dematerialized form.
2. These Designated Depository Participants (DDPs) are entities authorized by RBI & SEBI who are responsible for facilitating trading and holding securities in electronic form.

#### **6. Income Tax and reporting Compliance:**

1. NRIs investing in Indian mutual funds and portfolios are liable to pay Income tax in India.
2. NRI's should be aware of the income tax provisions on their investment income on dividend, interest, and capital gains.
3. Disclosure of their income from these investments should be done in the income tax returns which should be filed on a timely basis.
4. They may have to report details and income earned from the portfolio investments in India in tax returns of the countries in which they are tax residents.

## **Investment in shares and Debentures of Indian company by NRI**

### **Restrictions:**

An NRI cannot purchase shares or debentures under this scheme:

- a) Chit fund or a Nidhi company
- b) Company engaged in agriculture / plantation activities.

## **Investment in Portfolio, Mutual Funds, Shares, and Debentures in India by NRI**

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- c) Company engaged in real estate business or construction of farmhouses or dealing in Transfer of Development Rights. (Here real estate business shall not include development of township, construction of residential/ commercial premises, roads, bridges, etc.).

### **Non-Repatriable basis:**

Subject to the above restrictions, a Non-resident Indian may, without any limit, purchase on non-repatriation basis, shares or convertible debentures of an Indian company issued whether by public issue or private placement or right issue.

### **Mode of investment on non-repatriation basis:**

- out of NRO account,
- inward remittances through normal banking channels,
- out of FCNR/NRE account,
- Out of (Non-resident Non repatriable account) NRNR
- If NRI is resident of Nepal and Bhutan the amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid by way of inward remittance in foreign exchange through normal banking channels only.

### **Remittance/credit of sale maturity/proceeds of Shares and/or Debentures:**

1. The net sale/maturity proceeds (after payment of taxes) of shares and/or debentures of an Indian company purchased by NRI or OCB under this Scheme, may be allowed by the designated branch of an authorized dealer,
  - a. to be credited to NRSR account of the NRI investor where the payment for purchase of shares and/or debentures sold was made out of funds held in NRSR account, or
  - b. at the NRI investor's option, to be credited to his/its NRO or NRSR account, where the shares and/or debentures were purchased from inward remittance or funds held in NRE/FCNR/NRO/NRNR account.
  - c. This scheme is pure on repatriable basis – the amount invested in shares or debentures under this scheme and the capital appreciation thereon shall not be allowed to be repatriated abroad.

### **Purchase and sale of securities other than shares or debentures of an Indian company by NRI:**

1. A Non-resident Indian may, without limit, purchase on repatriation basis,
  - a. Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds.
  - b. bonds issued by a public sector undertaking(PSU) in India.

## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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- c. shares in Public Sector Enterprises being dis-invested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.
2. A Non-resident Indian may, without limit, purchase on non-repatriation basis, dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India, or National Plan/Savings Certificates.

### **Method of payment for purchase of shares/ convertible debentures:**

1. The amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE/FCNR /NRO/NRSR/NRNR account maintained with an authorized dealer or as the case may be with an authorized bank in India.
2. The amount of consideration for purchase of shares or convertible debentures of an Indian company on repatriation basis, shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE/FCNR account maintained with an authorized dealer or as the case may be with an authorized bank in India
3. Provided that in the case of an NRI resident in Nepal and Bhutan, the amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid only by way of inward remittance in foreign exchange through normal banking channels.

### **Sale/ Maturity proceeds of shares or convertible debentures:**

1. The sale/maturity proceeds (net of applicable taxes) of shares or convertible debentures purchased under this Scheme shall be credited only
  - To NRSR account where the purchase consideration was paid out of funds held in NRSR account
  - To NRO or NRSR account at the option of the seller where the purchase consideration was paid out of NRO account.

### **Permission for Sale of Securities:**

1. A person resident outside India who has purchased securities in accordance with this Schedule may
  - a. sell such securities through a registered stockbroker on a recognized stock exchange or
  - b. tender units of mutual funds to the issuer for repurchase or for payment of maturity proceeds or

- c. tender Government securities/treasury bills to the Reserve bank of India of India for payment of maturity proceeds.

### **Practical Questions and Suggestions:**

**A. Can NRIs take their securities outside India?**

There is no express prohibition in FEMA. As such due to securities now being in “demat” form physical transfer of security assumes little or no significance.

**B. Can the NRI remit abroad, the income earned from Portfolio investments in India?**

Income such as interest, dividend earned by the NRI from the portfolio investments whether acquired on repatriable basis or non – repatriable basis can be remitted abroad after paying the applicable taxes in India.

However capital gains can be repatriated only if investment is acquired on repatriable basis.

**C. Can NRIs invest under portfolio investment scheme out of funds borrowed in India?**

No NRIs cannot invest out of borrowed funds in India.

**D. Can NRIs avail loan against such securities?**

Yes. NRIs can borrow against shares or other securities. However, the loan should be utilized for meeting the borrower’s personal requirements or for his own business purposes.

**E. Can NRIs appoint a power of attorney to manage portfolio on behalf of them?**

Yes, NRI can appoint power of attorney to manage his portfolio however the power of attorney holder cannot affect remittance outside India.

**F. What are the points NRIs should keep in mind while making portfolio investments in India?**

**NRIs should comply with the following conditions:**

- Purchase and sale are carried out through a registered broker on a recognized stock exchange.
- All transactions of purchase and sale must be delivery based. Speculative transactions are not allowed.
- The NRI designates a bank branch for routing all his purchase and sale transactions through that Bank branch only.

**G. Is any approval required from anyone to begin Portfolio Investment?**

NRIs do not need any approval to undertake Portfolio Investment however they must comply with the guidelines prescribed under FEMA.

## Forms for Outward Remittance

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### Outward remittance schemes in India

Outward remittance schemes in India refer to the various avenues through which Indian residents can send money abroad. These schemes are regulated by the Reserve bank of India of India (RBI) and are subject to certain conditions and limitations. Here are some of the common outward remittance schemes available for Indian residents:

1. Liberalised Remittance Scheme (LRS):
  - a) Under the Liberalised Remittance Scheme, **all resident individuals**, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.
  - b) The Scheme was introduced on February 4, 2004, with a limit of USD 25,000. The LRS limit has been revised regularly to make it in line with the prevailing economic conditions.
  - c) A certificate issued by a Chartered Accountant in form 15CB which is prescribed by the Central Board of Direct Taxes, is required for remittance to be made under the LRS Scheme.
  - d) If the remitter is a minor, the LRS declaration form must be countersigned by the minor's natural guardian.
  - e) This Scheme is not available to corporates, partnership firms, HUF, Trusts etc.
  - f) The remittance facility under the Scheme is not available for the following:
    - Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, prescribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
    - Remittance for margins or margin calls to overseas exchanges or overseas counterparty.
    - Remittances to purchase FCCBs issued by Indian companies in the overseas secondary market.
    - Remittances to trade in foreign exchange abroad.
    - Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as "non-cooperative countries and territories", from time to time.

- Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised by the Reserve bank of India of India to the banks.
  - Gifting by a resident to another resident, in foreign currency, to the latter's foreign currency account held abroad.
- g) Further, resident individuals can avail of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of FEM (CAT) Amendment Rules 2015, dated May 26, 2015, within the limit of USD 250,000 only for the following purposes:
- Private visits to any country (except Nepal and Bhutan)
  - Gift or donation
  - Going abroad for employment
  - Emigration
  - Maintenance of close relatives abroad
  - 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.
  - Expenses in connection with medical treatment abroad
  - Studies abroad
  - Under the Scheme, Resident individuals are free to acquire and hold shares or debt instruments or any other asset including immovable property outside India without prior approval of the Reserve bank of India of India.
  - An individual who has availed of a loan abroad while as a non-resident can repay the same on return to India under the Scheme as a resident.
  - Investor, who has remitted funds under LRS can retain, reinvest the income earned on the investments.
  - Individuals can also open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Scheme without prior approval of the Reserve bank of India. The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this Scheme
  - Remittances under the Scheme are allowed only in respect of permissible current or capital account transactions or a combination of both. All other transactions which are otherwise not permissible under FEMA and those in the nature of remittance for margins or margin calls to overseas exchanges/ overseas counterparty are not allowed under the Scheme.



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- The facility is not available for making remittances directly or indirectly to Bhutan, Nepal, Mauritius, and Pakistan.
  - The Scheme is not available for remittance to countries identified by Financial Action Task Force (FATF) as non-co-operative countries and territories as available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org) or as notified by the Reserve bank of India of India.
- h) Remittances under the LRS Scheme can be consolidated with respect to family members subject to the individual family members complying with the terms and conditions of the Scheme. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account and investment if they are not the co-owners/co-partners of the investment/ overseas bank account.
- i) Remittances for acquiring immovable property outside India from a person resident outside India, may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme.
- j) It is mandatory for the resident individual to provide his/her Permanent Account Number (PAN) for all transactions under LRS made through Authorized Persons.
2. 1 million Dollar Scheme :
- a) A Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) may remit an amount up to USD one million, per financial year, out of the balances held in his Non- Resident (Ordinary) Rupee (NRO) account or on account of sale proceeds of assets (inclusive of assets acquired by way of inheritance or settlement), for all Bonafide purposes, a) subject to as the satisfaction of the AD bank, b) on production of an undertaking by the remitter and c) certificate by a Chartered Accountant in form 15CB as prescribed by the Central Board of Direct Taxes
- b) A foreign national of non-Indian origin who has retired from an employment in India or who is a widow of an Indian citizen who was resident in India or who has inherited assets from a person resident in India, may remit an amount not exceeding USD one million, per financial year, subject to as a) the satisfaction of the AD bank, b) on production of documentary evidence in support of acquisition / inheritance of assets, c) an undertaking by the remitter and 15CB certificate by a Chartered Accountant as prescribed by the Central Board of Direct Taxes
- c) This remittance facilities are not available to citizens of Nepal and Bhutan
- d) The Repatriation under this scheme must comply with the regulations of the Income Tax Act, 1961, further the funds should be transferred directly to the individual's overseas bank account.

## FORM NO.10F

“Form 10 F” is used by residents of a foreign country to declare their tax residency status. This form is critical for entities or individuals claiming benefits under a Double Tax Avoidance Agreement (DTAA) between India and their country of residence.

Purpose of Form 10 F:

1. Tax Residency Declaration: Form 10 F allows a taxpayer to declare their status as a resident in a foreign country for the purposes of tax benefits under a DTAA.
2. Claiming DTAA Benefits: By filling out this form, a foreign resident can avail themselves of benefits under the DTAA, such as reduced withholding tax rates on income earned in India, including interest, dividends, royalties, and fees for technical services.
3. Providing Necessary Information: The form collects information such as the taxpayer's residency status, the tax identification number in the resident country, and the period of residence, which are essential for assessing eligibility for DTAA benefits.

This form must be submitted to the tax authorities or the withholding agent in India who is responsible for deducting tax at source on payments made to non-residents. It ensures compliance with the relevant provisions of the DTAA and helps in avoiding double taxation of the same income in two different countries.

**Handbook on Obligations and Privileges of Non-Resident under FEMA**

**FORM NO.10F**

[See sub-rule(1)of rule 21AB]

**Information to be provided under sub-section(5) of section 90 or sub-section(5) of section 90A of the Income-tax Act, 1961**

I \_\_\_\_\_ \*son/daughter of Shri \_\_\_\_\_ in the capacity of \_\_\_\_\_ (designation) do provide the following information, relevant to the previous year \_\_\_\_\_ \*in my case/in the case of \_\_\_\_\_ for the purposes of sub-section (5)of\* section 90/section 90A:-

<b>Sl. No.</b>	<b>Nature of information</b>	<b>Details#</b>
(i)	Status (individual; company, firm etc.) of the assessee	Please fill the basic details as asked such as status of the assessee and PAN of the
(ii)	Permanent Account Number (PAN) of the assessee if allotted	Please fill the Nationality status of assessee.
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	Tax Identification Number (TIN): This is a unique identifier that a government assigns to a taxpayer. This number is crucial for tax purposes as it helps identify the taxpayer's tax records in their home country.
(iv)	Assessee's tax identification number in the country or specified territory of residence and if there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident	Alternative Unique Number: If the assessee does not have a TIN (which might be the case in some countries), they must provide an alternative unique number that the government of their country or specified territory uses to identify them. This could be any official number like a social security number, national insurance number for official purposes to identify the individual.
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	Fill the Period and Address of the assessee for which the residential status is mentioned in the certificate.
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	This is a declaration and the assessee is required to sign here and fill the details.

2. I have obtained a certificate referred to in sub-section (4) of section 90 of sub-section (4) of section 90A from the Government of \_\_\_\_\_ (name of country or specified territory outside India).

**Forms for Outward Remittance**

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Signature:

Name:

Address:

Permanent Account Number:

**Verification**

I do here by declare that to the best of my knowledge and belief what is stated above is correct complete and is truly stated.

This is a verification -cum-declaration that affirms that all the details that are filled above are True & Correct.
---

Verified today the \_\_\_\_\_ day of \_\_\_\_\_

---

Signature of the person providing the information

## Handbook on Obligations and Privileges of Non-Resident under FEMA

### Form 13 Application by a person for a certificate under sections 197 and/or 206C(9) of the Income-Tax Act, 1961, for no \*deduction/collection of tax or \*deduction/ collection of tax at a lower rate

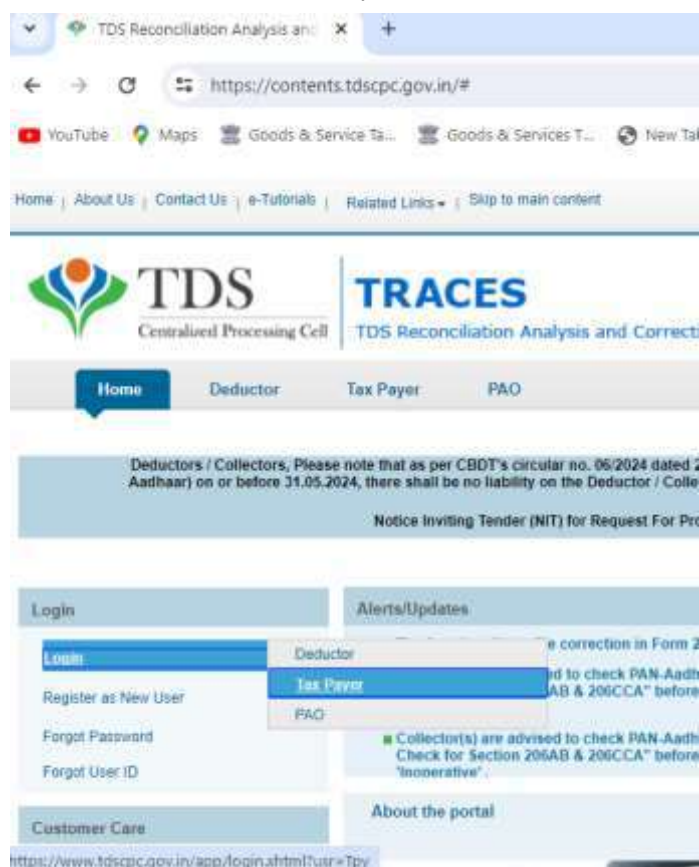
A person resident in India is liable to deduct tax at source (TDS) u/s 195 of the Income Tax Act, 1961, on purchase of property / shares from An NRI / OCI.

As per section 195 TDS is deductible on the full sales amount without considering the cost price after indexation if applicable in the hands of the NRI / OCI. This may result in tax being deducted more than the capital gains tax to the NRI / OCI and refund will have to be claimed by the NRI/OCI. To avoid this, the NRI / OCI may approach the Income Tax officer beforehand and apply for a lower deduction certificate to ascertain the tax rate after considering the cost / indexed cost price.

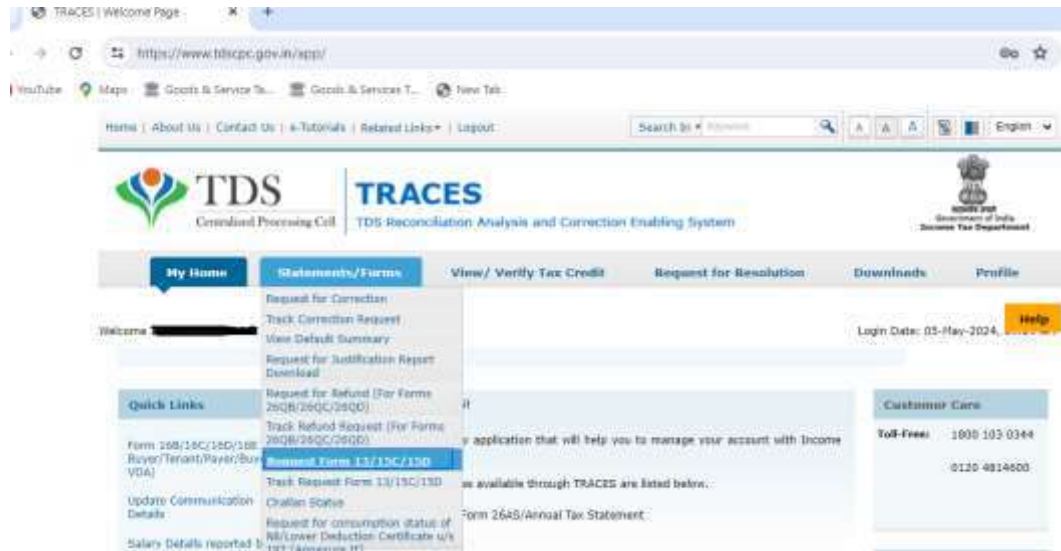
NRI / OCI should first get his income tax jurisdiction transferred to the international taxation jurisdiction of the income tax.

This application for NIL/lower deduction of tax is to be made in form 13 online by logging into the taxpayer login in the Traces portal of the Income Tax department and is to be digitally signed.

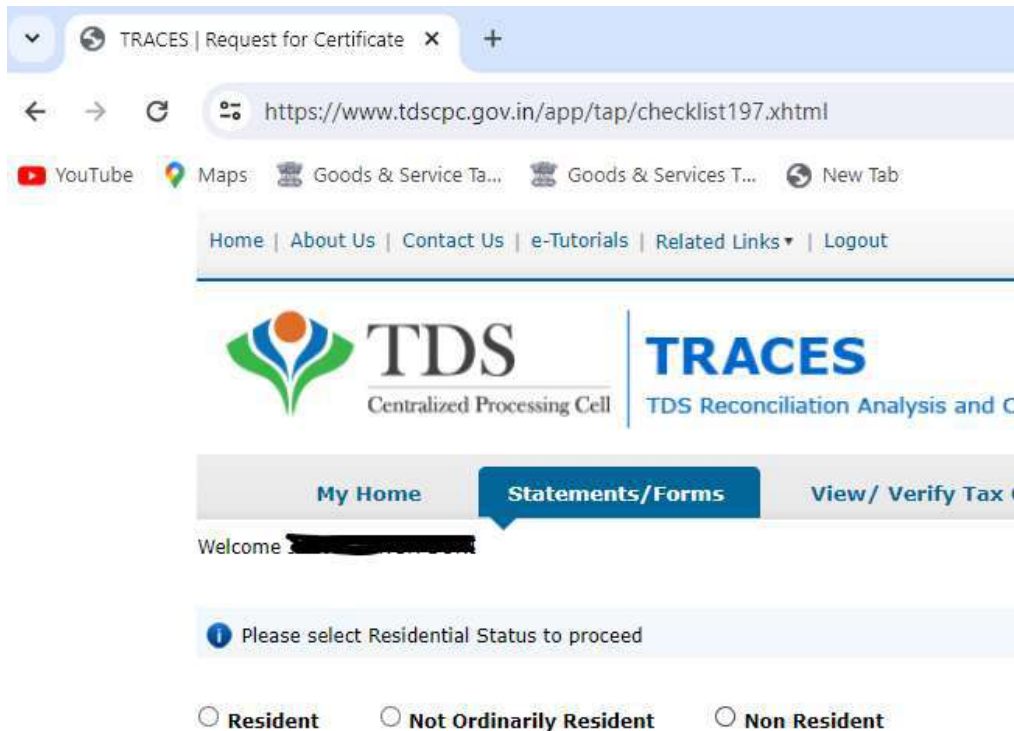
1. Log in to the Traces portal, Select Tax payer option,



2. Select Request form 13/15C/15D from the statement / forms tab



3. Select option Non resident



## Handbook on Obligations and Privileges of Non-Resident under FEMA

4. Select option to file form 13 online and choose the financial year, mostly in case of NRI TAN will not be available – select option without TAN

The screenshot shows the TRACES portal interface. At the top, there is a navigation bar with links for Home, About Us, Contact Us, e-Tutorials, Related Links, and Logout. Below this is the TDS logo and the TRACES system name. The user is logged in and has selected the 'Statements/Forms' tab. The form prompts the user to choose between two options: 'With (TAN & Amount) - Deductor TAN(s) & amount both are available (Annexure-I & III is applicable)' and 'Without TAN & with Amount - Deductor TAN(s) are not available (Annexure-II is applicable)'. The 'Without TAN & with Amount' option is selected.

5. The form will appear – Fill in the basic details, in clause (vii) – select the financial year for which the transaction relates, In clause (viii) mention the capital gains amount, in clause (ix) – mention the tax amount on capital gain, mention the details of tax already paid mentioned in clause (xi)

## Forms for Outward Remittance

Alternate Mobile Number:

State (Please enter State as per current address of Taxpayer):

District:

**Note:** Jurisdictional AD will be assigned on the basis of State & District provided by the applicant in original application of Form-13 and same will be applicable for next original(s) & revision(s).

(vi) Details of existing liability under Income-tax Act, 1961 and Wealth-tax Act, 1957:

Assessment Year (1)	Liability under the Income-tax Act, 1961				Amount payable under the Wealth-tax Act, 1957 (Rs.) (6)
	Amount payable in respect of advance-tax (Rs.) (2)	Amount payable for self assessment tax (Rs.) (3)	Amount for which notice of demand under section 156 has been served but not paid (Rs.) (4)	Amount payable as deductor or collector which had become due but not paid (Rs.) (5)	
2023-24	0	0	0	0	0

(vi) Previous year to which the payments relate:

(vii) Estimated total income of the previous year referred to in (vi):

(Please upload computation of estimated total income of the previous year in upload section.)

(viii) Total tax including interest payable for the total income referred to in (vii):

(ix) Details of income claimed to be exempt and not included in the total income in (vii) (Please upload a note giving reason for claiming such exemption):

(x) Details of payment of advance-tax and tax already deducted/collected, if any, for the previous year referred to in (vi) till date: (If the date of Application is on or after 1st April for which Financial year certificate is sought):

Nature of prepaid tax	Amount of Tax Paid (Rs.)
Advance Tax	<input type="text" value="0"/>
TDS	<input type="text" value="0"/>
TCS	<input type="text" value="0"/>

(xi) Declaration for exemption under section 10, section 11 or section 12 for certain entities covered under Income Tax Rule 2BAB or not:

(xii) Where return of income for any of the four previous year preceding to the previous year referred to in (vi) has not been filed. (Please upload a computation of estimated total income of the previous year for which return of income has not been filed in upload section.):

(xiii) Where return of income for any of the four previous year has been filed in paper form: (Please upload the copy of such returns in upload section.):

[Back](#) [Save](#) [Save & Proceed](#)

- Add a row, In the drop down in clause (1) select Section 195, in Drop down in clause (2) – select the head of income – like capital gains, mention the sales amount in clause (3), mention the requested rate of TDS required in clause (4)

Income Tax Rate Table

	194G	194LBA(a)	194LBA(b)	194LBA(c)	194LBB	194LBC	192				
	Commission, etc., on the sale of lottery tickets	Income referred to in Clause (a) of section 10(23FC) from units of a business trust	Income referred to in Clause (b) of section 10(23FC) from units of a business trust	Income referred to in Clause (c) of section 10(23FC) from units of a business trust	Income in respect of units of investment fund	Income in respect of investment in securitization trust	Salary	Fee for technical Service	Interest Payment	Investment Income	long-term capital gains referred to in clause (36) of section 10
	5.000	5.000	10.000	30.000	30.000	30.000	30.00	20.00	20.00	20.00	20.00

### Annexure-II(No/Lower Deduction)

[For the purpose of tax deduction at source]

(See Section-192,194G,194LBA(a),194LBA(b),194LBA(c),194LBB,194LBC & 195)

Sl. No	Section under which tax at source is to be deducted (1)	Nature of Payment (2)	Estimated amount of income/sum to be received (Rs.) (3)	Requested rate of deduction (4)
<input type="checkbox"/>				

[Go to Basic Details](#) [Edit](#) [Save](#) [Add Row](#) [Remove Row](#) [Save & Proceed](#)

- Next is the attachment page, where you can upload the computation of capital gains and capital gains tax.



## Handbook on Obligations and Privileges of Non-Resident under FEMA

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### TDS rates specified in the section 195 of the Income Tax act, 1961.

Particulars	TDS Rate (%)
Income in respect of investment made by NR	20
Income by way of long-term capital gains in Section 115E, Section 112 and 112A	10
Income by way of short-term capital gains under Section 111A	15
Any other income by way of long-term capital gains	20
Interest payable on money borrowed in Foreign Currency	20
Income by way of royalty and/or fees for technical services	10
Any other income	
– Other than Company	30
– Company	40

**Note:** The assessee can refer to the Double Taxation Avoidance Agreement (DTAA) entered into by India with the contracting country for the TDS rate, subject to obtaining tax residency certificate of the vendor party.

**Documents required for remittance from NRO account to NRE Account/foreign bank account.**

#### 1. FORM 15 CA & CB

Any payment or any remittance is made to a Non-resident is subject to many rules and regulations.

Section 195 of the **Income Tax Act, 1961** makes it compulsory to deduct the Income-tax from payments made to Non-Resident. The person making payment/remittance to non – resident holds the responsibility to furnish an undertaking (in form 15CA) attested by a Chartered Accountant in (Form 15CB). So, when a person has to make any payment or remit any money to non-residents, the bank will have to verify the payment of tax and act accordingly. The purpose behind collecting the taxes at the time of the remittance is to avoid a situation where it becomes difficult or impossible to collect the tax from the NRI later.

For the ascertainment of TDS to be deducted, 2 forms are required to be filled on the portal of the Income tax department <https://www.incometax.gov.in/iec/foportal>. Form 15CA and form 15CB.

Form 15CA has to be furnished online by a person making any remittance of foreign nature to a non- resident. It is duly signed by him or if a body corporate, then signed by the authorized signatory.

15 CB is a certificate issued by a Chartered Accountant (CA) certifying the Tax deduction at source (TDS) applicability and TDS liability amount on the foreign remittance. The CA needs

to ascertain TDS liability with respect to provisions of section 195 of the Income Tax Act, 1961 coupled with the provisions of Double Tax Avoidance Agreements.

In Form 15CA and 15CB, information related to details of the remittee, details of the remitter, bank details from which remittance is to be made, nature of remittance whether in the form of royalty, salary, commission, business, technical services or others, the details of DTAA (Double Taxation Avoidance Agreement) and Tax Residency Certificate in case of benefit of DTAA is obtained in tax ascertainment.

The importance of Form 15CA and 15CB are as follows:

1. **Legal Requirement:** Under the Income Tax Act, 1961, it is mandatory for any person making a remittance (payment) to a non-resident or a foreign company to furnish information about such payments. The objective of Form 15CA is to provide details of the remittance, while objective of Form 15CB is to obtain a certificate from a Chartered Accountant (CA) certifying the taxability, nature, and rate of tax of the remittance.
2. **Ensure compliance of Tax deducted at source:** These forms help to ensure that the remitter provides the relevant information and deducts Tax at Source u/s 195 of the Income Tax Act, 1961, before making the remittance. This helps Income tax authorities to track foreign transactions and ensure proper tax compliance.
3. **Facilitation of Foreign Exchange Control:** Form 15CA/15CB helps in maintaining records of foreign outward remittances other than imports, which assists the government in monitoring and regulating cross-border transactions.
4. **Compliance with Reserve bank of India(RBI) Guidelines:** The Reserve bank of India mandates the submission of Form 15CA and 15CB for various types of foreign remittances. Adhering to these guidelines is crucial for businesses and individuals involved in international transactions.
5. **Documentation for Audit and Record-Keeping:** Keeping records of Form 15CA and 15CB is essential for audit purposes and maintaining compliance with tax laws. These forms serve as documentary evidence of foreign remittances and associated tax compliance.

Overall, Form 15CA and 15CB play a significant role in ensuring transparency, tax compliance, and regulatory adherence in cross-border transactions originating from India.

### **Applicability of 15CA and 15CB**

To ease the burden of compliance on small transactions or non - taxable transactions, the department has provided certain exemptions for filing the form 15CA and form 15CB.

1. Form 15CB is to be filled only when the remittance or aggregate of remittance amount exceeds Rs 5 Lakhs during a financial year and you are required to furnish a certificate from an accountant defined as per Section 288.
2. Form 15CA is not required to be furnished if it falls within the specified list mentioned in the sub rule (3) of Rule 37BB of the Income Tax Act, 1961.

## Handbook on Obligations and Privileges of Non-Resident under FEMA

- (i) The remittance is made by an individual and it does not require prior approval of Reserve bank of India as per the provisions of section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000 or
- (ii) the remittance is of the nature specified in column (3) of the specified list below:
- (iii) **SPECIFIED LIST**

Sl. No.	Purpose code as per RBI	Nature of payment
(1)	(2)	(3)
1	S0001	Indian investment abroad - in equity capital (shares)
2	S0002	Indian investment abroad - in debt securities
3	S0003	Indian investment abroad - in branches and wholly owned subsidiaries
4	S0004	Indian investment abroad - in subsidiaries and associates
5	S0005	Indian investment abroad - in real estate
6	S0011	Loans extended to Non-Residents
7	S0101	Advance payment against imports
8	S0102	Payment towards imports - settlement of invoice
9	S0103	Imports by diplomatic missions
10	S0104	Intermediary trade
11	S0190	Imports below Rs. 5,00,000(For use by ECD offices)
12	S0202	Payment for operating expenses of Indian shipping companies operating abroad.
13	S0208	Operating expenses of Indian Airlines companies operating abroad
14	S0212	Booking of passages abroad - Airlines companies
15	S0301	Remittance towards business travel
16	S0302	Travel under basic travel quota (BTQ)
17	S0303	Travel for pilgrimage
18	S0304	Travel for medical treatment
19	S0305	Travel for education (including fees, hostel expenses, etc.)
20	S0401	Postal services

## Forms for Outward Remittance

21	S0501	Construction of projects abroad by Indian companies including import of goods at project site
22	S0602	Freight insurance - relating to import and export of goods
23	S1011	Payments for maintenance of offices abroad
24	S1201	Maintenance of Indian embassies abroad
25	S1202	Remittances by foreign embassies in India
26	S1301	Remittance by non-residents towards family maintenance and savings
27	S1302	Remittance towards personal gifts and donations
28	S1303	Remittance towards donations to religious and charitable institutions abroad
29	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	S1305	Contributions or donations by the Government to international institutions
31	S1306	Remittance towards payment or refund of taxes
32	S1501	Refunds or rebates or reduction in invoice value on account of exports
33	S1503	Payments by residents for international bidding.

3. Form 15CA is divided into four parts, based on the nature of the remittance and the applicable provisions of the Income Tax Act 1961. The quantum of information required to be filled up and ease of filing varies.
- 1) Part A:
    - a) Part A of Form 15CA is required to be filled when the remittance amount is taxable under the Income Tax Act 1961.
    - b) It applies when the aggregate remittance does not exceed Five lakh rupees in the particular financial year (F.Y.).
    - c) This part is applicable for remittances that are taxable, and the remitter needs to declare details of the remittance and its taxability.
  - 2) Part B:
    - a) Part B of Form 15CA is to be filled when the remittance amount exceeds five lakh rupees in the financial year.
    - b) It is also required when an order/certificate under sections 195(2)/

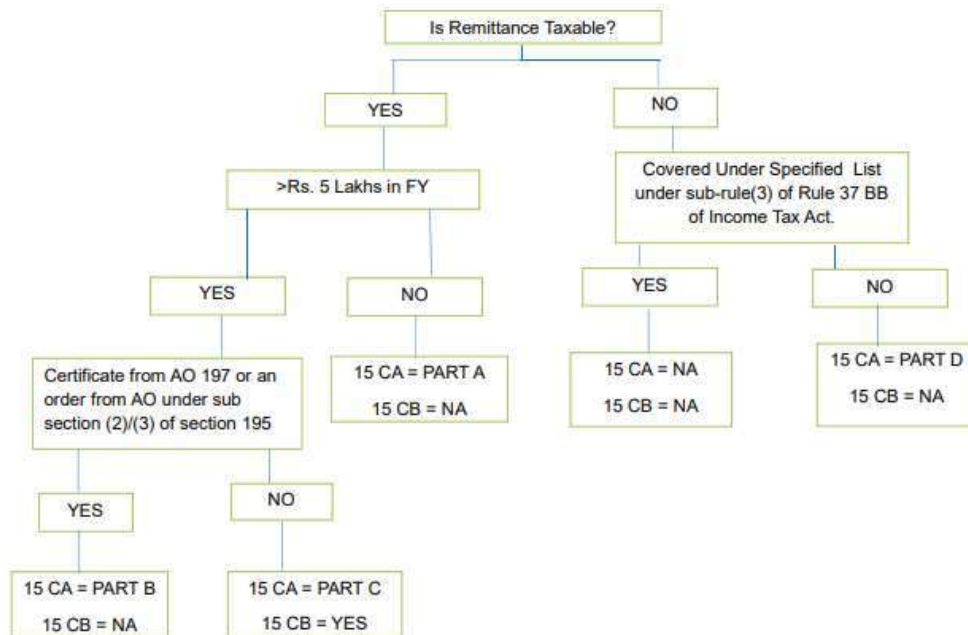
## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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195(3)/197 of the Income Tax Act has been obtained from the Assessing Officer (A.O.).

- c) This part applies when a specific tax deduction rate or a nil tax deduction rate certificate has been obtained from the A.O.
- 3) Part C:
- a) Part C of Form 15CA needs to be filled when the remittance amount in the financial year exceeds Five lakh rupees, and a certificate in Form No. 15CB from a chartered accountant has been obtained.
  - b) It applies when a chartered accountant certifies the nature of the remittance, the applicable tax rate, and compliance with the provisions of the Income Tax Act.
  - c) Part C serves as a supporting document to Form 15CA, providing assurance regarding the tax implications of the remittance.
- 4) Part D:
- a) Part D of Form 15CA is filled when the remittance is not taxable, other than payments referred to in rule 37BB (3) by the person referred to in rule 37BB(2).
  - b) It applies when the remittance is not subject to tax under the Income Tax Act, and the remitter needs to declare such non-taxable remittances.

The applicability of various form of 15CA and applicability of form 15CB is summarized in the table below:



**Filing Form 15CA and 15CB involves several steps. Here's a general overview of the process:**

1. Determine the Applicability: First, determine the applicability of 15CA and 15CB with respect to the transaction, For 15CA determine which part of the form is applicable. As mentioned above different nature of transactions require different parts of form 15CA to be filled up.
2. Appoint and Assign a Chartered Accountant for 15CB: On the Income tax portal you need to assign a Chartered Accountant in practice who will provide the 15CB certificate.
3. Filing of 15CB by Chartered Accountant: The Chartered Accountant files the form 15CB after verifying the nature of transaction and certifies the implication of tax deducted at source u/s 195.
4. Fill Form 15CA: If form 15CB is applicable, give reference of the acknowledgement of the form 15CB – the Income Tax portal pre - fills major information required in the form 15CA from the form 15CB which cannot be edited, fill in the balance information and digitally sign the same, if body corporate can be signed by the authorized signatory. If form, 15CB is not applicable, determine which part of 15CA is to be filled up with respect to the nature of the transaction, and fill up the details, digitally sign the form and file the same.
5. Payment of Tax deducted at source (if applicable): If the transaction is subject to tax deduction at source u/s 195 of the Income Tax act, 1961, ensure that the applicable tax is deducted and deposited with the government within the specified time frame.

## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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6. Submission to bank: Submit the form 15CA and form 15CB ( if applicable) to the bank while making the remittance.

### **Documents required for Form 15CA and 15 CB: -**

1. Details of Remitter
  - a. Remitter's Name
  - b. Remitter's Address
  - c. Remitter's PAN Number
  - d. Principal Place of Business of the Remitter
  - e. E-Mail Address and Phone No. Of Remitter
  - f. Status of the Remitter (Firm/Company/Other)
2. Details of Remittee
  - a. Name and Status of the Remittee
  - b. Address of the Remittee
  - c. Principal Place of Business Country of the Remittee
3. Details of the Remittance
  - a. Country to Which Remittance Is Made
  - b. Currency in Which Remittance Is Made
  - c. Amount of Remittance in Indian Currency
  - d. Proposed Date of Remittance
  - e. Nature of Remittance as Per Agreement (Invoice Copy to Be Asked From Client)
4. Bank Details of the Remitter
  - a. Name of Bank of the Remitter
  - b. Name of Branch of the Bank
  - c. BSR Code of the Bank
5. Others
  - a. Father's Name of the Signing Person
  - b. Designation of the Signing Person

Sample 15 CB Form:-

**FORM NO. 15CB[See rule 37BB]**

Certificate of an accountant

Acknowledgement Number -



I, have examined the agreement (wherever applicable) between \_\_\_\_\_ (Remitters) and \_\_\_\_\_ (Beneficiary) requiring the above remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of Chapter- XVII-B:  
We hereby certify the following :-

A. Name and address of the beneficiary of the remittance

B. 1:	Country to which remittance is made	United States Of America
	Currency	USD
2:	Amount payable	
	In foreign currency	9,50,570
	In Indian (₹)	₹ 8,00,00,000
3:	IFSC Code	-
	Name of Bank	HDFC Bank Ltd
	Branch of the bank	MUMBAI CENTRAL BRANCH, DR. ANANDRAO, NAIR ROAD, 400008
4:	BSR code of the bank branch (7 digit)	0510483
5:	Name of the Authorized Dealer	-
	Branch Address of the Authorized dealer	-
6:	Proposed date of remittance	18-Mar-2024
7:	Nature of remittance as per agreement/document	Other Income / Other (Not In The Nature Of Income) REMITTANCE TO FOREIGN BANK ACCOUNT UNDER ONE MILLION DOLLAR SCHEME WHICH HAS BEEN ALREADY OFFERED FOR TAX IN INDIA

Name of the Beneficiary & Remitter with PAN
Name & Address of the Beneficiary
Country to which the remittance is to be made with its currency
Amount to be remitted in foreign currency & in INR as specified
Name of the bank from which the amount is to be remitted with the branch name and its BSR code.
Proposed date of remittance
Nature of remittance or the reason of remittance.



## Handbook on Obligations and Privileges of Non-Resident under FEMA

8.	Please furnish the relevant purpose code as per RBI	Capital Account 50099 - Other capital payments not included elsewhere
9.	In case the remittance is net of taxes, whether tax payable has been grossed up	No
10.	Taxability under the provisions of the income-tax Act (without considering DTAA)	
	i. Is remittance chargeable to tax in India	No
	ii. If not reasons thereof	REMITTANCE TO FOREIGN BANK ACCOUNT UNDER ONE MILLION DOLLAR SCHEME WHICH HAS BEEN ALREADY OFFERED FOR TAX IN INDIA
	iii. If yes, (a) the relevant section of the Act under which the remittance is covered	-
	(b) The amount of income chargeable to tax	-
	(c) The tax Liability	-
	(d) Basis of determining taxable income and tax liability	-
11.	If income is chargeable to tax in India and any relief is claimed under DTAA	
	i. Whether tax residency certificate is obtained from the recipient of remittance	No
	ii. Please specify relevant DTAA	NOT APPLICABLE
	iii. Please specify relevant article of DTAA	NOT APPLICABLE
	iv. Taxable income as per DTAA	₹ 0
	v. Tax liability as per DTAA	₹ 0
11.A	If the remittance is for royalties, fee for technical services, interest, dividend, etc.(not connected with permanent establishment) please indicate:-	No
	a. Article of DTAA	-
	b. Rate of TDS required to be deducted in terms of such article of the applicable DTAA (%)	-
11.B	In case the remittance is on account of business income, please indicate:-	No
	a. Whether such income is liable to tax in India	-
	b. If so, the basis of arriving at the rate of deduction of tax	-

We have to select the options stated by RBI regarding purpose of remittance

Taxability details if the nature of remittance is subject to taxability if there is no DTAA. Here the nature is just the transfer to capital account of the beneficiary.

Details of DTAA to be mentioned.

Amount of taxability to be mentioned.

Details to be filled if remittance is for royalties, fees for technical services.

Details to be filled if remittance is on account of business income.

## Forms for Outward Remittance

c. If not, then please furnish brief reasons thereof, specifying relevant article of DTAA	-
11.C. In case the remittance is on account of capital gains, please indicate :-	No
a. Amount of long term capital gains	-
b. Amount of short-term capital gains	-
c. basis of arriving at taxable income	-
11.D. In case of other remittance not covered by sub-items A, B and C	Yes
a. Please specify nature of remittance	REMITTANCE TO FOREIGN BANK ACCOUNT UNDER ONE MILLION DOLLAR SCHEME WHICH HAS BEEN ALREADY OFFERED FOR TAX IN INDIA
b. Whether taxable in India as per DTAA	No
c. If yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA (%)	-
d. If not, please furnish brief reasons thereof, specifying relevant article of DTAA	REMITTANCE TO FOREIGN BANK ACCOUNT UNDER ONE MILLION DOLLAR SCHEME WHICH HAS BEEN ALREADY OFFERED FOR TAX IN INDIA
12. Amount of TDS	
In foreign currency	0
In Indian (₹)	₹ 0
13. Rate of TDS (%)	As per Income-tax Act
14. Actual amount of remittance after TDS (In foreign currency)	9,50,570
15. Date of deduction of tax at source, if any	-

Accountant Name :-	
Name of the proprietorship/firm	
Membership Number	
Address	

Registration Number	
IP Address	
Date of Certificate	14-Mar-2024
Place	

Acknowledgement Number -		
This form has been digitally signed by	having PAN	from IP Address
on <b>14-Mar-2024 12:37:24 PM</b>		
Dsc SI No and issuer: <u>C=IN,O=Professional DigiSign Pvt. Ltd.,OU=Certifying Authority</u>		

Details to be filled if remittance is on account of Capital gains.

Details to be filled if doesn't satisfy any of the conditions.

Details of Amount of TDS if the remittance is subject to taxability.

Details of the Chartered Accountant as asked in the form (Name, Membership No., Address)

After the Chartered Accountant has approved the remittance, we get the date of certificate and acknowledgement number which is used to fill Form 15 CA.

## Handbook on Obligations and Privileges of Non-Resident under FEMA

### Sample 15 CA Form:-

#### FORM NO. 15CA [See rule 37BB]

Information to be furnished for payments to a non-resident not being a company, or to a foreign company



Acknowledgement Number - 143772641150324

#### Part C

To be filled up if the remittance is chargeable to tax under the provisions of the Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, exceeds five lakh rupees during the financial year and a certificate in Form No. 15CB from an accountant as defined in the Explanation below subsection (2) of section 288 has been obtained.

#### Section A - GENERAL INFORMATION

##### Remitter

Name of the remitter	
PAN of the remitter	
TAN of the remitter	
Area Code	
AD Type	
Range Code	
AD No	
Principal Place of Business	
Complete Address of the remitter	
Email of the remitter	
Phone Number of the remitter	
Status	Individual
Residential status of remitter	Non-Resident

##### Remittee

Name of recipient of remittance	
PAN of the recipient of remittance	
Status	
Address	

The Details of remitter & remittee need to be filled as asked.

## Forms for Outward Remittance

	STATES - 30004
Email address	*
Phone Number	*
Country to which remittance is made	United States Of America
Principal Place of Business	UNITED STATES OF AMERICA

### Accountant

a. Name of the Accountant signing the certificate	
b. Name of the proprietorship/firm of the accountant	
c. Address	
d. Registration no. of the accountant	
e. Date of certificate	14-Mar-2024
f. Certificate No.	

### Section B - PARTICULARS OF REMITTANCE AND TDS (as per certificate of the accountant)

#### Remittance

1. Country to which remittance is made	United States Of America
Currency	USD
2. Amount Payable	
In foreign currency	9,50,570
In Indian (₹)	₹ 8,00,00,000
3. IFSC Code	*
Name of Bank	HDFC Bank Ltd
Branch of the bank	MUMBAI CENTRAL BRANCH, DR. ANANDRAO, NAIR ROAD, 400008
4. BSR Code of the bank branch (7 digit)	0510483
5. Name of Authorized Dealer	*
Branch Address of the authorized dealer	*

Details to be filled of the country to which the remittance is to be made.

The details of Chartered Accountant auto populated when we import the Form 15 CB in Form 15 CA Form.

Detailsof Remittance& Amount of TDS are to be filled if the remittances are subject to taxability.

The amount & bank details are auto populated when we import the Form 15 CB in Form 15 CA Form.

## Handbook on Obligations and Privileges of Non-Resident under FEMA

	STATES - 30004
Email address	-
Phone Number	-
Country to which remittance is made	United States Of America
Principal Place of Business	UNITED STATES OF AMERICA

### Accountant

a. Name of the Accountant signing the certificate	
b. Name of the proprietorship/firm of the accountant	
c. Address	
d. Registration no. of the accountant	
e. Date of certificate	14-Mar-2024
f. Certificate No.	

### Section B - PARTICULARS OF REMITTANCE AND TDS (as per certificate of the accountant)

#### Remittance

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Branch of the bank	MUMBAI CENTRAL BRANCH, DR. ANANDRAO, NAIR ROAD, 400008
4. BSR Code of the bank branch (7 digit)	0510483
5. Name of Authorized Dealer	-
Branch Address of the authorized dealer	-

Details to be filled of the country to which the remittance is to be made.

The details of Chartered Accountant auto populated when we import the Form 15 CB in Form 15 CA Form.

Details of Remittance & Amount of TDS are to be filled if the remittance is subject to taxability.

The amount & bank details are auto populated when we import the Form 15 CB in Form 15 CA Form.

## Forms for Outward Remittance

6. Proposed date of remittance	18-Mar-2024
7. Nature of remittance as per agreement/document	Other Income / Other (Not In The Nature Of Income) REMITTANCE TO FOREIGN BANK ACCOUNT UNDER ONE MILLION DOLLAR SCHEME WHICH HAS BEEN ALREADY OFFERED FOR TAX IN INDIA
8. Relevant purpose code as per RBI	Capital Account SD099 - Other capital payments not included elsewhere
9. In case the remittance is net of taxes, whether tax payable has been grossed up	No

### I.T. Act

10. Taxability under the provisions of the Income-tax Act (without considering DTAA)	
a. The relevant section of the Act under which the remittance is covered	-
b. The amount of income chargeable to tax	
c. The tax Liability	-
d. Basis of determining taxable income and tax liability	-

### DTAA

11. If any relief is claimed under DTAA	
i. Whether tax residency certificate is obtained from the recipient of remittance	No
ii. Please specify relevant DTAA	NOT APPLICABLE
iii. Please specify relevant article of DTAA (Nature of payment as per DTAA)	NOT APPLICABLE
iv. Taxable income as per DTAA	₹ 0
v. Tax liability as per DTAA	₹ 0
A. If the remittance is for royalties, fee for technical services, interest, dividend, etc.(not connected with permanent establishment), please indicate	No

All the details here are auto filled when we import the Form 15 CB in Form 15 CA Form.

## Handbook on Obligations and Privileges of Non-Resident under FEMA

a. Article of DTAA	-
b. Rate of TDS required to be deducted in terms of such article of the applicable DTAA (%)	-
B. In case the remittance is on account of business income, please indicate	No
a. The amount of income liable to tax in India	₹ 0
b. The basis of arriving at the rate of deduction of tax	-
C. In case the remittance is on account of capital gains, please indicate	No
a. Amount of long term capital gains	-
b. Amount of short-term capital gains	-
c. basis of arriving at taxable income	-
D. In case of other remittance not covered by sub-items A, B and C	Yes
a. Please specify nature of remittance	REMITTANCE TO FOREIGN BANK ACCOUNT UNDER ONE MILLION DOLLAR SCHEME WHICH HAS BEEN ALREADY OFFERED FOR TAX IN INDIA
b. Whether taxable in India as per DTAA	No
c. if yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA (%)	-
d. If not, please furnish brief reasons thereof specifying relevant article of DTAA	REMITTANCE TO FOREIGN BANK ACCOUNT UNDER ONE MILLION DOLLAR SCHEME WHICH HAS BEEN ALREADY OFFERED FOR TAX IN INDIA

### TDS

12. Amount of tax deducted at source	
In foreign currency	0
In Indian (₹)	₹ 0
13. Rate of TDS as per Income-tax Act (%) or As per DTAA (%)	As per Income-tax Act 0
14. Actual amount of remittance after TDS (In foreign currency)	9,50,570
15. TDS Date of deduction of tax at source, if any	-

Details to be filled if remittance is subject to taxability.

Details about the amount of income liable to tax in India are to be filled

Details about Amount of TDS are to be filled.

Forms for Outward Remittance

Verification	
<p>I, <b>AI</b>, son/daughter of <b>AI</b> the capacity of <b>Individual</b> (designation) solemnly declare that the information given above is true to the best of my knowledge and belief and no relevant information has been concealed.</p> <p>I, certify that a certificate has been obtained from an accountant, particulars of which are given in this Form, certifying the amount, nature and correctness of deduction of tax at source.</p> <p>In case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or not paid in full, I undertake to pay the amount of tax not deducted or not paid, as the case may be, along with interest due. I shall also be subject to the provisions of penalty for the said default as per the provisions of the Income-tax Act, 1961.</p> <p>I, further undertake to submit the requisite documents for enabling the Income-tax authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my liability under the Income-tax Act, 1961 as a person responsible for deduction of tax at source.</p>	
Name of the person responsible for paying to non-resident	<b>AI</b>
Designation of the person responsible for paying to non-resident	<b>Individual</b>
IP Address	<b>11</b>
Date	<b>15-Mar-2024</b>
<b>Acknowledgement Number - 14</b>	
<p>Income Tax Form submitted electronically on <b>15-Mar-2024 03:56:30 PM</b> from IP Address <b>11</b> and verified by <b>AI</b> using PAN/TAN <b>AARPB5703A</b> on <b>15-Mar-2024 03:58:12 PM</b> using Electronic Verification Code <b>IV</b> generated through <b>AI</b> code.</p>	

Form 15 CA is to be uploaded on Income Tax Portal by Authentication & Verification Process.

We have to mention the status of the individual and place from where the form is verified and upload the form which will be processed within 24 Hours.



### 2. Form A2

Form A2 is a form to be filled up by the remitter of foreign exchange making the remittance under the **instructing** the AD Bank to remit the amount to the NRE account or the foreign bank account of the individual, it is for payments other than imports and remittances covering intermediary trade. Authorized Dealer banks, offering internet banking facilities to their customers may allow online submission of Form A2.

This form is also required to be filled up by residents for transfer of sum to non-residents under the Liberalised Remittance scheme (LRS)

The Major information required in this form is as follows:

- a) Details of Remitter: Name, address, PAN of the remitter.
- b) Details of account to be debited for remittance: Details of Bank account number, swift code etc.
- c) The code of remittance: The form A2 has a list of codes regarding various natures of remittance, the remitter has to choose the correct code and enter the same in the form A2. For remittance for remittance to relative or transfer of funds to own NRE Account / foreign bank account, the purpose code will be "other capital payments not included elsewhere."
- d) List of remittances already made under LRS in the financial year: This is applicable if the remittance is made under the LRS scheme, it is to ascertain whether the limit of USD 250,000 per financial year has not been exceeded.
- e) Declaration: Declaration that a) the funds being remitted are within LRS limit of USD 250,000 per financial year if under the LRS Scheme and b) that the remittance is not for prohibited purposes.

Forms for Outward Remittance

<sup>19</sup> Annex

**FORM A2**  
(To be completed by the applicant)

(For payments other than imports and remittances covering intermediary trade)

AD Code No. \_\_\_\_\_  
Form No. \_\_\_\_\_  
(To be filled in by the Authorised Dealer)

Currency \_\_\_\_\_ Amount \_\_\_\_\_ Equivalent to Rs. \_\_\_\_\_  
(To be completed by the Authorised Dealer)

**Application for Remittance Abroad**

I/We \_\_\_\_\_  
(Name of applicant remitter)

PAN No. <sup>19</sup> \_\_\_\_\_

Address \_\_\_\_\_

authorize \_\_\_\_\_  
(Name of AD branch)

To debit my Savings Bank/ Current/ RFC/ EEFC A/c. No. \_\_\_\_\_ together with their charges and \_\_\_\_\_

\* a) Issue a draft : Beneficiary's Name \_\_\_\_\_  
Address \_\_\_\_\_

\* b) Effect the foreign exchange remittance directly –  
1) Beneficiary's Name \_\_\_\_\_  
2) Name and address of the bank \_\_\_\_\_  
3) Account No. \_\_\_\_\_

\* c) Issue travelers cheques for \_\_\_\_\_

\* d) Issue foreign currency notes for \_\_\_\_\_  
Amount (specify currency) \_\_\_\_\_

\* (Strike out whichever is not applicable) for the purpose/s indicated below

Sr. No.	Whether under LRS (Yes/No)	Purpose Code	Description
As per the Annex			

(Remitter should put a tick (✓) against an appropriate purpose code. In case of doubt/ difficulty, the AD bank should be consulted).

<sup>19</sup> Inserted vide [AP \(FEB\) Series Circular No. 33 dated February 11, 2016](#). Prior to insertion it read as Annex 1, which has since been replaced with effect from the same date.

<sup>19</sup> Modified vide [AP \(FEB\) Series Circular No. 37 dated June 18, 2016](#). Prior to modification, it read "PAN No. (For remittances exceeding USD 25,000 and for all capital account transactions)".

Information regarding the remitter and the bank account through which the remittance is to be made.

Purpose code of the remittance – the list of codes and the relevant nature of transactions are affixed to the Form A2. The correct code should be selected based on the nature of remittance.

## Handbook on Obligations and Privileges of Non-Resident under FEMA

<p><b>Declaration</b> (Under FEMA 1999)</p> <p>1. # I, .....(Name), hereby declare that the total amount of foreign exchange purchased from or remitted through, all sources in India during the financial year including this application is within the overall limit of the Liberalised Remittance Scheme prescribed by the Reserve Bank of India and certify that the source of funds for making the said remittance belongs to me and the foreign exchange will not be used for prohibited purposes.</p> <p><b>Details of the remittances made/transactions effected under the Liberalised Remittance Scheme in the current financial year (April- March) .....</b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th style="width: 10%;">Sl. No</th> <th style="width: 15%;">Date</th> <th style="width: 15%;">Amount</th> <th style="width: 60%;">Name and address of AD branch/FFMC through which the transaction has been effected</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>2. # The total amount of foreign exchange purchased from or remitted through, all sources in India during this calendar year including this application is within USD _____ (USD _____) the annual limit prescribed by Reserve Bank of India for the said purpose.</p> <p>3. # Foreign exchange purchased from you is for the purpose indicated above.</p> <p># (Strike out whichever is not applicable )</p> <p>Signature of the applicant</p> <p>(Name) Date:</p> <p><b>Certificate by the Authorised Dealer</b></p> <p>This is to certify that the remittance is not being made by/ to ineligible entities and that the remittance is in conformity with the instructions issued by the Reserve Bank from time to time under the Scheme.</p> <p>Name and designation of the authorised official: Stamp and seal</p> <p>Signature:</p> <p>Date:</p> <p>Place:</p>	Sl. No	Date	Amount	Name and address of AD branch/FFMC through which the transaction has been effected									<p>If Remittance is under the LRS scheme – declaration of the same and details of past remittance under the LRS scheme.</p> <p>Signature of the applicant</p> <p>To be filled up by the AD Bank.</p>
Sl. No	Date	Amount	Name and address of AD branch/FFMC through which the transaction has been effected										

### **3. FEMA Declaration**

A FEMA declaration form is to be filled by an NRI who wishes to transfer funds from NRO account to NRE account or foreign bank account. The major information required under this form is as follows:

- a) Details of the applicant
- b) Details of remittance Amount
- c) Details of account in which amount is required to be transferred.
- d) Source of funds
- e) Declarations that:
  - Remittance is eligible for repatriation in accordance with the provisions of Foreign Exchange Management Act of India, 1999 (FEMA)
  - Remittance is under the one-million-dollar scheme.
  - If remittance is from sale of property declaration that the property was acquired within the provisions of FEMA Act.
  - The remitter is an NRI as per the FEMA provisions.
  - Remittance is made from source of funds from the legitimate receivables in India and not from any borrowings.
  - The remittance is not in contravention of any provisions, rules, and regulations of the FEMA Act.

#### **FEMA Declaration**

(To be completed by the applicant for transfer of funds from NRO to NRE account / NRO to foreign bank account)

- I. Details of the applicant -
  - ✓ Name :
  - ✓ Address :
  - ✓ NRO Account No. :
  - ✓ Nationality :
- II Details of the Transfer required -
  - ✓ Amount (in Rupees) :
  - ✓ Source of Funds :
  - ✓ NRE Account No. :
  - ✓ declare that: -

## **Handbook on Obligations and Privileges of Non-Resident under FEMA**

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- The above amount is eligible for repatriation in accordance with the provisions of Foreign Exchange Management Act of India, 1999
- In case the source of fund is sale of immovable property, I confirm that the property was acquired in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000
- The total amount of foreign exchange utilized, and Rupee funds transferred to my NRE account, during this financial year **including this application** is within USD 1 Million (US One Million Dollars only) annual limit prescribed by Reserve bank of India for the said purpose.

I / We also declare that the transaction, the details of which are specifically mentioned in the application above, does not involve and is not designed for the purpose of any contravention of evasion of the provision u/s 10 (5) chapter III FEMA 1999 or any rule, regulation, notification, direction or order made there under. I / We also hereby agree and undertake to give such information / documents as will reasonably satisfy you about this transaction in terms of the above declaration.

I / We also understand that if I / We refuse to comply with any such requirement or make only unsatisfactory compliance there with, the bank shall refuse in writing to undertake the transaction and shall if, it has reason to believe that any contravention / evasion is contemplated by me / us report the matter to Reserve bank of India of India. I / We further declare that the undersigned has / have the authority to give this declaration and undertaking on behalf of the account holder. [for Power of Attorney holders]

I hereby declare that I am using the facility of Funds Transfer under USD 1 million scheme only through \_\_\_\_\_ Bank. I also hereby declare that the said remittance is sought to be made out of the balances held in my NRO account arising from my legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, I will render myself liable for penal action under FEMA. I hereby declare that I am a Non-Resident Indian (NRI) as per the Income Tax Act, 1961.

I hereby declare that the above details are true.

Date:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

## **Bibliography**

- Bare Act of Foreign Exchange Management Act, 1999
- Reserve bank of India and other Government publications
- Income tax Rules/FEMA regulations