



# Welcome

## A Complete Guide to NRI Taxation



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**A Complete Guide to  
NRI TAXATION –  
Income Tax  
FEMA**



# INCOME TAX

BRADKINS

WEDNESDAY, APRIL 11, 1990

BUS STOP

I HAVE A FEELING  
THIS ISN'T GOING TO  
BE A GOOD DAY...

HI...

IRS

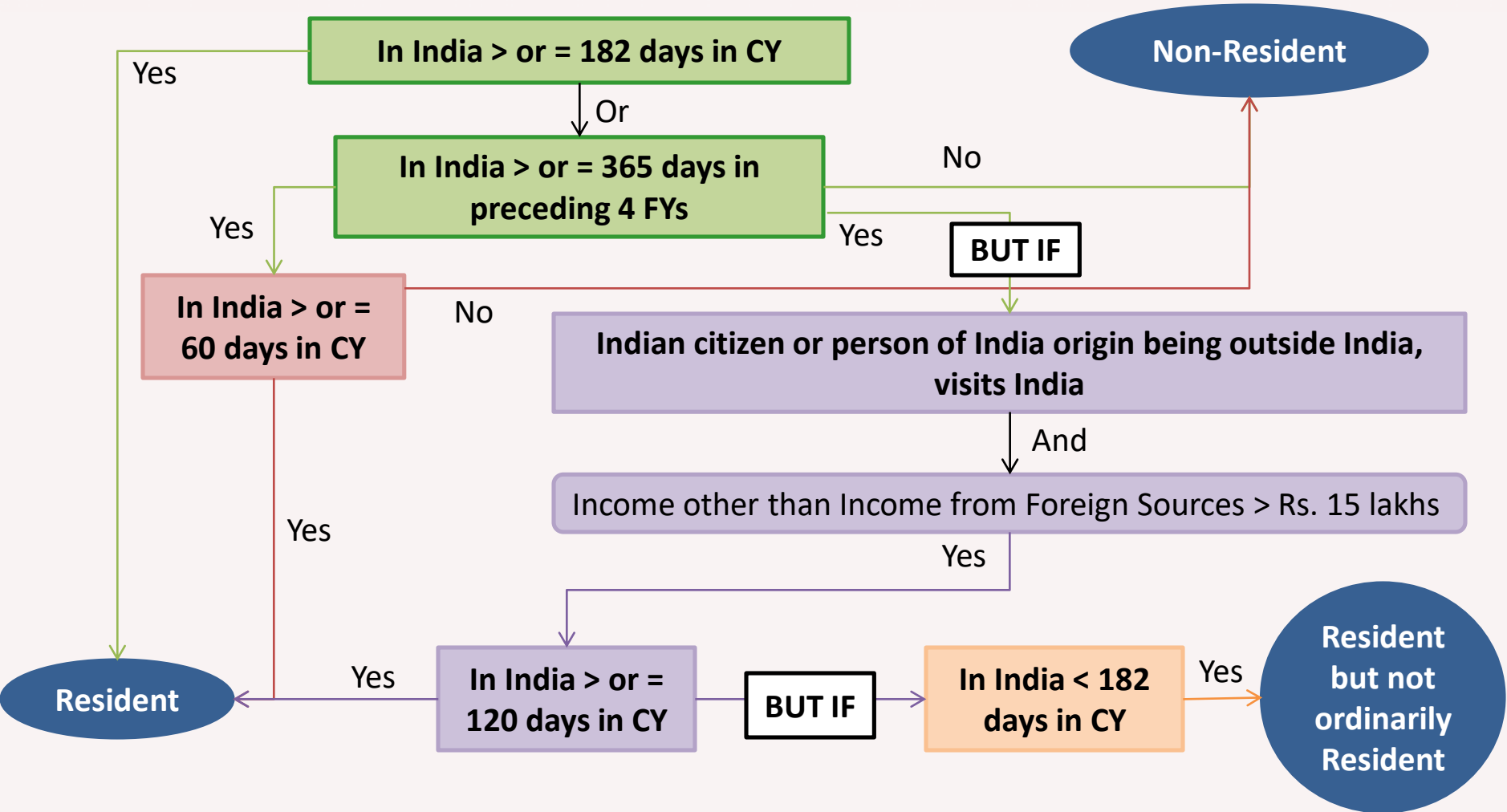


# NRIs

## - Taxation

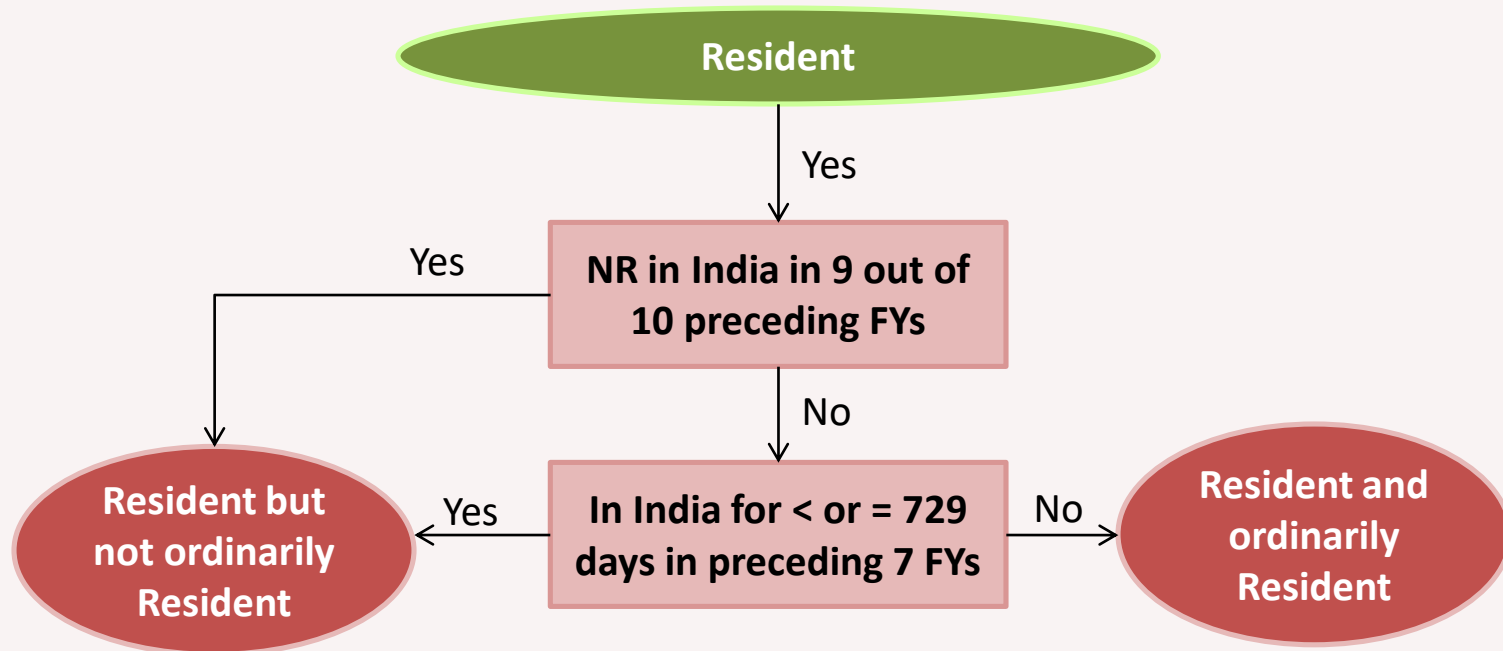
Particulars	ROR	RNOR	Non-Resident
Indian income	Taxable in India	Taxable in India	Taxable in India
Global income	Taxable in India	Not taxable in India	Not taxable in India
Basic exemption limit	Individual (Age less than 60 Years) - Up to Rs. 2,50,000 Senior Citizen (Age above 60 Years) – Up to Rs. 3,00,000 Super Senior Citizen (Age above 80 Years) – Up to Rs. 5,00,000		Up to Rs. 2,50,000
Bank interest	Interest on RFC / savings / NRE accounts taxable	Interest on NRE and FCNR accounts exempt	
Return of income	Mandatory If income exceeds basic exemption limit.  However, NRIs do not need to file a return in India if their total income includes only investment income and long term capital gains on transfer of foreign exchange asset where tax is deducted.		
Foreign assets	Reportable	Not reportable	Not reportable

# RESIDENTIAL STATUS





# RESIDENTIAL STATUS



*For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).*

*The Finance Act 2020 has also introduced the concept of deemed residency, which will be explained in the forthcoming slide.*

# CASE STUDY

## Facts

- Mr. X, an Indian citizen, has a professional set up in India including office and staff.
- In FY 2019-20, he left India to stay with his son in the UAE.
- He manages his practice from UAE.
- In FY 2020-21, he comes to India for a visit and stays in India for 138 days.

## Total income for FY 2020-21

Consultancy income from India clients	13 lakhs
Interest income from Indian bank accounts	1 lakh
Consultancy incomes from NRIs in UAE	2 lakh
Interest income from UAE bank accounts	1 lakh
<b>Total income</b>	<b>17 lakh</b>

- Income accruing in India = Rs. 14 lakh (A)
- Income accruing outside India = Rs. 3 lakh (B)
- Income accruing outside India from a profession set up in India = Rs. 2 lakh (C)
- Taxable income in India = Rs. 16 lakh (A+C)
- Therefore, **Mr. X will be considered as an RNOR for FY 2020-21**, since “income other than income from foreign sources” exceeds Rs. 15 lakhs.

# FINANCE ACT 2020

## Deemed Residency

- An individual, being a citizen of India,
- shall be deemed to be resident in India in any previous year,
- If his Indian Income (Not Income from Foreign Sources) exceeds Rs. 15 lakhs; and
- if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.”

- 1) The individual will be Resident and Not Ordinarily Resident
- 2) The individual's duration of stay in India is not a determinant factor
- 3) Applicability to be checked every year
- 4) Persons of Indian Origin will not be covered in the above provisions
- 5) Beneficial rates applicable to NRs lost due to Deemed Residency

# FINANCE ACT 2020

## Section 115BAC – Optional Regime of Taxation for Individual and HUF

Income Slabs (in INR)	Tax rates
Upto 2,50,000	-
2,50,001 to 5,00,000	5
5,00,001 to 7,50,000	10
7,50,001 to 10,00,000	15
10,00,001 to 12,50,000	20
12,50,001 to 15,00,000	25
Above 15,00,000	30

The above is subject to various conditions including foregoing various exemptions and deductions

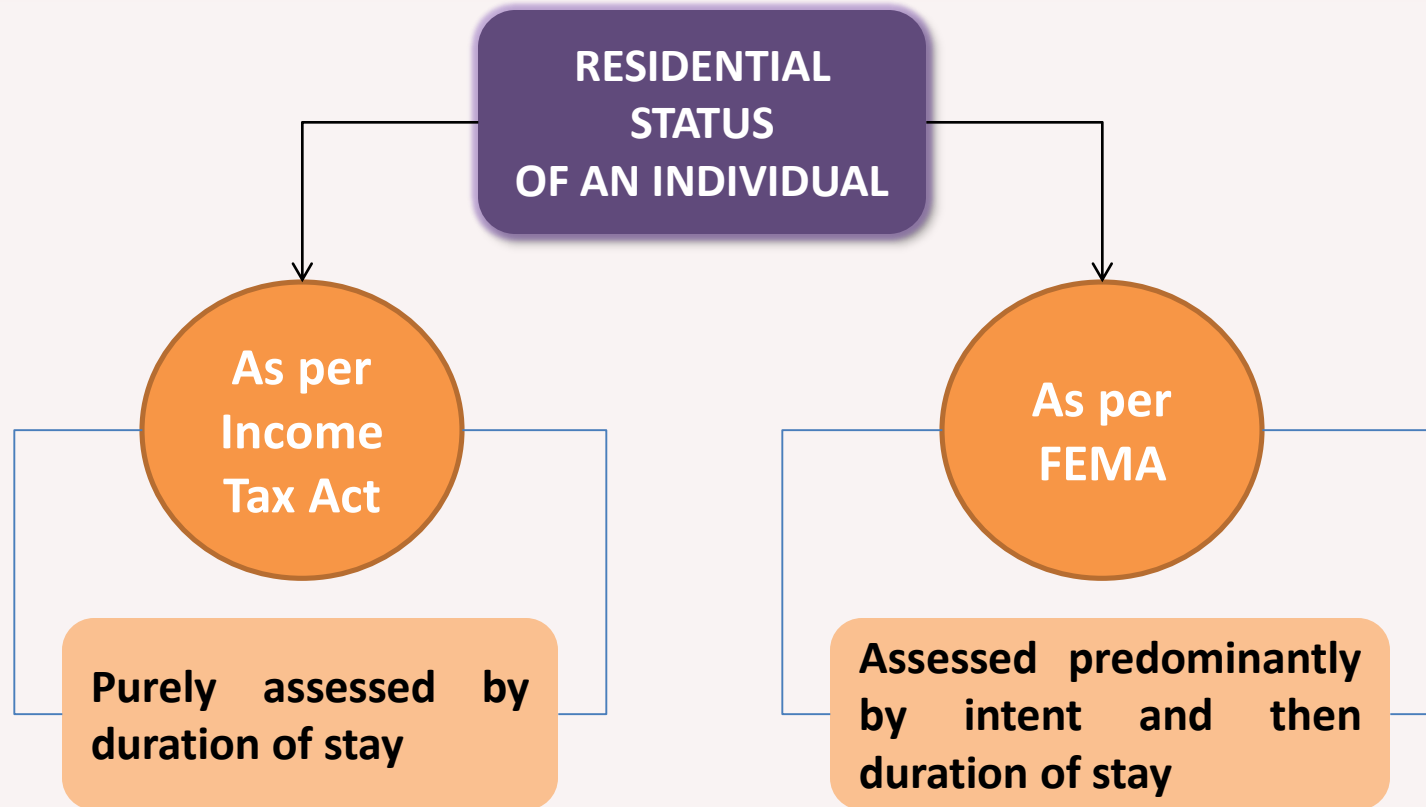
- **TCS liability on** an authorised dealer receiving an amount or an aggregate of amounts exceeding Rs. 7 lakh in a financial year for **remittance abroad under the LRS** at 5%
- TCS @ 0.5% on amount exceeding Rs.7 lakh if remittance is an education loan obtained from any financial institution under section 80E.
- In case no PAN / Aadhaar is furnished the rate shall be 10%.

DDT removed. Dividend will be taxed in the hands of the shareholders.

# FOREIGN EXCHANGE MANAGEMENT ACT, 1999



# RESIDENTIAL STATUS



It may so happen that an individual has different residential status under FEMA and ITA in a particular year. Both need to be taken care of simultaneously.

# RESIDENTIAL STATUS

## - FEMA

Person residing in India for > 182 days during the preceding financial year

Yes

A person who has gone out of India or who stays outside India for

- taking up **employment** outside India, or
- carrying on outside India a **business** or vocation outside India, or
- any **other purpose**, in such circumstances as would indicate his intention to stay outside India for an **uncertain period**

Yes

Non-resident

No

Resident

# RESIDENTIAL STATUS

## - FEMA

Person residing outside India for 183 days or more during the preceding financial year

Yes

A person who has come to or stays in India for

- taking up **employment** in India, or
- carrying on in India a **business** or vocation in India, or
- any **other purpose**, in such circumstances as would indicate his intention to stay in India for an **uncertain period**

No

Non-resident

Yes

Resident



# RESIDENTIAL STATUS

## - FEMA

A.P. (DIR Series) Circular No.45 dated 8<sup>th</sup> December 2003

A combination of tests determining the intention of the individual and the duration of stay

However, RBI has clarified that Indian students studying abroad will be treated as non-residents for FEMA purposes

Such students going abroad for studies will be treated as NRIs from the day they depart from India

The student will be a non-resident till his date of return to India permanently or for an uncertain period

# NRIs

## - Do's & Don'ts



### **BANKING**

- Intimate banks about change in residential status
- Convert resident savings account into NRO and open NRE / FCNR
- Open foreign currency account with bank outside India
- NRO accounts can be jointly held with residents.
- NRIs cannot hold resident fixed deposit – convert to NRO deposits.

# NRI's

## - Do's & Don'ts



Loans already given can continue post becoming a NRI

Fresh loans to be evaluated on case to case basis

Loans taken can continue subject to AD Bank's policies / conditions

- Intimate / re-designate demat account. No further purchase except through NRO account.
- Open a new demat account for purchasing shares as an NRI under the Portfolio Investment Scheme from overseas remittances / NRE account
- NRI can invest or trade in shares through secondary market only through PIS a/c
- NRI can have only one PIS a/c
- NRI cannot speculate



# NRIs

## - Do's & Don'ts



NRIs can continue to hold and purchase residential / commercial properties in India. However, purchasing agricultural property, plantations, farmhouse land, etc. isn't allowed.

NRIs can also lease and repatriate rental income after paying the due taxes, if any

NRIs are allowed to claim exemptions under Sections 54 and 54EC on long term capital gains

NRIs can also receive immovable property as gifts from relatives or through inheritance.

Buy an insurance before becoming NRI

Life insurance covers death that occurs globally

Health insurance is usually only for treatment in India



# NRIs

## - Do's & Don'ts



Allowed to carry foreign money in cash up to USD 3,000 (or its equivalent in other currencies).

Remittance under LRS exceeding USD 250,000, for medical / education purposes based on estimate received from institution abroad.

Remittance under LRS up to USD 250,000, may be received from close relatives for maintenance

Educational / home loans availed as residents by student leaving for studies abroad would be allowed to continue.

- NRIs cannot open new PPF accounts or invest further in existing accounts
- Can only continue existing active PPF accounts

Update KYC details with mutual fund houses



# NRIs

## - Do's & Don'ts



Repatriation of current income allowed subject to payment of taxes

Up to USD 1 million per financial year can be remitted outside India out of proceeds of assets / balances in NRO account

Remittances from India under LRS up to USD 250,000 per financial year from close relatives

Assign POA to a resident for operating bank accounts, performing real estate transactions, renting, signing forms.



# NRIs

## - Inheritance



An NRI or person of Indian origin (PIO) or foreign citizen of Non-Indian Origin, can inherit any immovable property in India, whether it is residential or commercial, agricultural land, plantation land or farm house.

If the property inherited was not acquired in accordance with the prevalent FEMA provisions, issues might arise at the time of inheritance.

### SALE OF INHERITED PROPERTY

Seller	Buyer	Type of Property
NRI	Resident, NRI or PIO	Sale of Residential or commercial property allowed.
PIO	Resident, NRI	Sale of Residential or commercial property allowed.
NRI / PIO	Resident and Indian citizen	Sale of agricultural land, plantation land or farm house allowed
Foreign citizen	Any person	RBI permission for Residential or commercial property
Foreign citizen	Resident and Indian citizen	RBI permission for Agricultural land, plantation land or farm house

# NRIs

## - Inheritance

An NRI or a Person of Indian Origin (PIO) may remit through an authorised dealer an amount, not exceeding USD 1,000,000 per financial year,

Out of the balances held in the NRO accounts / sale proceeds of assets / the assets 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;

If the remittance under the above is made in more than one instalment, the remittance of all instalments shall be made through the same Authorised Dealer.

Also, where the remittance is to be made from the balances held in the NRO account, the account holder shall furnish an undertaking to the Authorised Dealer that “the said remittance is sought to be made out of the remitter’s balances held in the account arising from his/ her 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, the account holder will render himself/ herself liable for penal action under FEMA.”



# BANK ACCOUNTS BY NRIs

## - Comparative Analysis (1/3)

Particulars	NRE	NRO	FCNR
Currency	Indian Rupees	Indian Rupees	Any permitted currency i.e. foreign currency freely convertible
Account Type	Savings, Current or Fixed Deposit	Savings, Current or Fixed Deposit	Fixed/Term Deposit
Who can open?	NRI and PIO	NRI Or Resident before becoming an NRI	NRI and PIO
Joint account with NRI	Yes		
Joint account with resident	Only with a resident relative on 'former or survivor' basis	With any resident on 'former or survivor' basis	Only with a resident relative on 'former or survivor' basis
Can power of attorney holder open the account?	No		
Can power of attorney holder operate the account?	Yes, can make local rupee payments		

# BANK ACCOUNTS BY NRIs

## - Comparative Analysis (2/3)

Particulars	NRE	NRO	FCNR
Permissible credits	<ul style="list-style-type: none"> <li>- Inward remittance to India</li> <li>- Interest on funds in account</li> <li>- Current income in India (subject to taxes)</li> <li>- Maturity proceeds of investments if investment made from this account</li> <li>- Any other credit permitted by RBI</li> </ul>	<ul style="list-style-type: none"> <li>- Inward remittance to India</li> <li>- Legitimate dues in India of account holder</li> <li>- Any amount received under such Regulations.</li> </ul>	Same as NRE
Eligible debits	<ul style="list-style-type: none"> <li>- Local disbursements</li> <li>- Remittances outside India</li> <li>- Investment in shares/securities/commercial paper of Indian company or for purchase of immovable property in India permitted by RBI</li> <li>- Any other transactions permitted by RBI</li> </ul>	<ul style="list-style-type: none"> <li>- All local payments including for investment</li> <li>- Remittances outside India of current income in India (net of taxes)</li> <li>- Settlement of charges on International credit cards.</li> </ul>	Same as NRE
Income Tax	Tax free	Taxable	Tax free

# BANK ACCOUNTS BY NRIs

## - Comparative Analysis (3/3)

Particulars	NRE	NRO	FCNR
Fund transfer to another account	Funds can be transferred from an NRE account to an NRO / NRE / Resident account	Funds can be transferred from an NRO account to an NRO / Resident account	Funds can be transferred from existing NRE/FCNR account
Repatriation	Balance fully repatriable	Not repatriable except for current income subject to payment of tax. Balance repatriable upto USD 1 mn per financial year	Balance fully repatriable
Change in residential status to resident	Should be designated as resident accounts or the funds may be transferred to RFC accounts	Shall be designated as resident accounts	FCNR deposits may be allowed to continue till maturity.
Best Suited For	To park overseas savings remitted to India by converting to INR	To park Indian earnings like rent, Indian salary, dividend, etc	To maintain account in Foreign Currency

# Returning NRIs

## - To-do List

An NRI returning to India is free to hold, own, transfer or invest in assets situated outside India, if the asset was acquired when the individual was resident outside India or inherited from an NR.

Foreign currency accounts

Income earned through employment / business / vocation outside India commenced when NRI

Income from investments

Income from gift or inheritance

Foreign exchange and income thereon acquired by inheritance from NR

Open Resident Foreign Currency (RFC) account with bank in India to hold foreign earnings and make related transactions

Open Resident demat account and transfer shares from PIS account post which the NRI demat account can be closed.

Re-designate Indian banking accounts from FCNR/NRE to the RFC accounts

If planning to dispose of any foreign investment, it may be recommended to do it before becoming ROR

Update KYC details with mutual fund houses

Once a resident, remittances outside India under LRS can be made

# LIBERALISED REMITTANCE SCHEME

## Overview

### Objective

Facilitate to remit funds for permitted current or capital account transactions or combination of both

### Prescribed limits

Under LRS, Authorised Dealer can freely allow remittance by resident individual up to USD 2,50,000 w.e.f. 26.05.2015.

### Permissible transactions

- Private visit; gift/donation; going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; studies abroad
- Opening foreign currency **bank account** abroad
- Purchase of **property** abroad
- Making **investment** abroad
- Setting up wholly owned **subsidiaries and Joint Venture**.
- Extending **loans** including loans in INR to NRI who are relatives

### #1 Primary requirement

It is mandatory to have PAN in India to make remittances under the scheme.

### Relevant form(s)

Remitter needs to furnish Form A2.

### No repatriation required

### Applicability

Applicable only to Resident Individuals including minors.

### Clubbing

- **Remittances of family members can be consolidated** for current account transactions
- For capital account transactions co-ownership mandatory.

# GIFTS

## From Resident to NRI / OCI

Assets	Permissibility under FEMA		Liability under Income tax	
	Gift from Relative	Gift from Non-Relative	Gift from Relative	Gift from Non-Relative
Liquid Funds	Yes - in foreign currency as well as Indian Rupees; restricted to USD 250,000 per FY	Yes - only in foreign currency; restricted to USD 250,000 per FY	None	Taxable under section 56(2)(x) in the hands of recipient ( <i>Refer note 1 below</i> )
Immovable Property in situated	Yes	Yes	None	Taxable under section 56(2)(x) in the hands of recipient
Shares and securities of an Indian company	Yes - several restrictive conditions applicable	No	None	Not applicable as not compliant under FEMA
Interest in LLP	No	No	None	Not applicable as not compliant under FEMA

*Note 1 - The Finance Act 2019 (No. 2) has amended the Income Tax Act to tax any sum of money received on or after 5<sup>th</sup> July 2019 by a non-resident from a resident as a gift whether in or outside India.*

# RELATIVES

## FEMA vs. Income Tax

Relation	FEMA	Income Tax
Spouse	Yes	Yes
Brother / Sister	Yes	Yes
Brother / Sister of the spouse	No	Yes
Brother / Sister of the either parents	No	Yes
Father / mother	Yes	Yes
Grandfather / grandmother	No	Yes
Son / daughter	Yes	Yes
Spouse of Son / daughter	Yes	Yes
Grandson / granddaughter	No	Yes
Spouse of lineal ascendant / descendant	No	Yes
Lineal ascendant / descendant of spouse	No	Yes
Step father / mother	Yes	No
Step brother / sister	Yes	No
Step son	Yes	No
Step daughter	No	No





# Thank You

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