



## ***My Dear Friend***

*I am presenting **Thursday Article as 31 FAQ's on Acquisition + Transfer of Property by Non Resident in India***

- 1. Any kind of non-compliance is attracting **Financial Penalties + imprisonment** (both).*
- 2. It's humbly suggested to stop non-compliance against furnishing of legal documents + correct information's (both).*
- 3. I trust that you will be enriched by reading this article*

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**● *With best wishes from CA. Satish Agarwal, New Delhi* ●**



## 31 FAQ's on Acquisition + Transfer of Property by Non Resident in India

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## **31 FAQ's on Acquisition + Transfer of Property by Non Resident in India**

### **(A) Acquisition of Immovable Property by Non Resident in India**

#### **1. Introduction on Acquisition of Immovable Property by Non Resident in India**

(i) (a) *Non Resident is permitted for acquisition through purchase + gift + inheritance (any) immovable property in India under FEMA, 1999*

(b) *Non Resident is permitted for transfer through sale to resident of India + non-resident of India (both) immovable property in India under FEMA, 1999*

*but*

(c) *Non Resident is permitted to gift to resident of India (only) immovable property in India under FEMA, 1999*

*+ (plus)*

(d) *Also Non Resident is permitted to give under inheritance to resident of India (only) immovable property in India under FEMA (Acquisition and Transfer of Immovable property in India) Regulations, 2000 as amended from time to time through Notification or Circular of RBI.*

#### **2. Meaning of Non-resident of India**

(i) *Non-resident Indian (NRI) under Indian Citizen Act (ICA) 1955*

● *NRI = Non-resident of India + Indian Citizen (Indian Passport holder) both*

(ii) *Foreign Citizen of Indian Origin known as Overseas Citizen of India (OCI) under ICA, 1955*

● *OCI = Non-resident of India + foreign passport holder + Indian Origin (all together)*



(iii) *Foreign Citizen of Non-Indian Origin under ICA, 1955*

- *Non NRI + Non OCI (both) = Non Resident of India + foreign passport holder + Non Indian origin (all together)*

(iv) *Miscellaneous Provisions for Non-Resident of India under FEMA, 1999*

(a) *RBI is not permitted to decide the residential status. Hence residential status to be decided by operation of law under FEMA, 1999*

(b) *Non-Resident is required to decide the residential status **himself** where questioned by govt. authorities.*

(c) *Resident of India + foreign citizen (both) treated as Not Permanent Resident (NPR) of India*

(d) *Non-resident of India is permitted to hold + to own + to transfer + to invest (any) in Indian currency + Indian security + immovable property as situated in India where acquired + held + owned (any) when non-resident was resident of India*

*or*

(e) *Where non-resident has inherited from resident of India under FEMA, 1999*

### **3. Acquisition of Agricultural Land + plantation property + farm house (any)**

(i) (a) *Non-resident is not permitted to acquire an agricultural land + plantation property + farm house (any) in India*

*+ (plus)*

(b) *NRI + OCI (both) not permitted to acquire an agricultural land + plantation property + farm house (any) in India*

(ii) *However non-resident is permitted to hold the agricultural land + plantation property + farm house in India as acquired + held + owned (any) when was resident of India + inherited from resident of India (any)*



#### **4. Repatriation by Non Resident against sale proceeds in India**

(i) Non-resident is not permitted to repatriate as maximum USD 1 million per financial year through NRO account as maintained in India

+ (plus)

(ii) Maximum USD 1 million to include also sale proceeds against asset as acquired under inheritance + settlement (any) in India

+ (plus)

(iii) Maximum USD 1 million is not applicable for repatriation through NRE account where sale proceed of immovable property already deposited into NRE account through NRO account within maximum USD 1 million per financial year

#### **5. Acquisition of property through Purchase + Gift + Inheritance (any) in India**

(i) NPR of India is permitted to acquire a residential + commercial property (both) simultaneously in India through purchase (only) under general permission route of RBI

+ (plus)

(ii) NRI + OCI (both) residing in 10 specified countries are not permitted to acquire the residential + commercial property (both) in India through purchase + gift + inheritance (any) without prior approval from RBI.

#### **6. Non Resident of 10 specified countries as located outside India**

(i) Afghanistan

(ii) Bangladesh

(iii) Bhutan

(iv) China

(v) Hong Kong

(vi) Iran



- (vii) *Macau*
- (viii) *Nepal*
- (ix) *Pakistan*
- (x) *Sri Lanka*

## **7. Documents as required under General Permission Route of RBI in India**

- *Non-resident is not required to file any document for acquisition of immovable property under general permission route of RBI.*

## **8. Restrictions on acquisition of residential + commercial (both) properties**

- (i) *NRI + OCI (both) permitted to purchase the residential + commercial properties (both) simultaneously as without any restriction on number of properties but for investments purpose (only).*
- (ii) *Hence NRI + OCI (both) permitted to purchase an unlimited in number the residential + commercial (both) properties but for investments purpose (only).*
- (iii) *NRI + OCI (both) not permitted to purchase the properties for trading purpose (only).*
- (iv) *However difference between investment purpose and trading purpose of immovable properties are debatable + required the reasonableness in period of holding of properties.*

## **9. Purchase of Immovable property by Foreign Citizen + Non-Indian Origin**

- (i) *Foreign Citizen + Non-Indian Origin (both) simultaneously are known as NPR of India is permitted to purchase an immovable property under general permission route of RBI.*
- (ii) *However Foreign Citizen + Non-Indian Origin (both) simultaneously are known as NPR of India is required to obtain prior permission from state govt. where permission is prescribed by state govt.*



## **10. Permission by Non Resident for acquisition of immovable property from RBI**

- *Permission from RBI is required for purchase of immovable property by resident of 10 specified countries.*

## **11. Purchase of Immovable property by foreign company through BO+PO (any)**

### *(i) Purchase of immovable property by foreign company through BO + PO (any)*

- (a) BO + PO (any) permitted to purchase an immovable property as without prior permission of RBI where property is necessary or incidental to carry on business in India*
- (b) Foreign company is required to make the payments against immovable property through foreign inward remittances under normal banking channel (only)*
- (c) Foreign company is required to file a declaration in Form IPI with RBI in 90 day from date of purchase of property*
- (d) Foreign company is permitted to mortgage the property with AD bank as security for borrowing by BO + PO (any)*
- (e) Foreign company is required to repatriate the sale proceeds on winding of BO + PO (any) with prior permission from RBI*

### *(ii) Purchase by foreign company through BO + PO (any) from 10 specified countries*

- *BO + PO (any) from 10 specified countries is permitted with prior permission from RBI where property is necessary or incidental to carry on business in India*

### *(iii) Purchase of immovable property by foreign company through LO*

- (a) LO is not permitted to purchase an immovable property in India*
- (b) LO is permitted to take an immovable property on lease (rent) for period as not exceeding 5 year as without prior permission from RBI*





## **12. Acquisition of immovable property by Non Resident through Gift in India**

*(i) NRI + OCI (both) permitted to acquire through gift*

*(a) From Resident of India*

*(b) From NRI*

*(c) From OCI*

*(ii) NRI + OCI (both) not permitted to acquire through gift*

*(a) As Agricultural land*

*(b) As Plantation Property*

*(c) As Farm house*

*(iii) Hence NRI + OCI (both) permitted to acquire residential + commercial property (both) only*

*(iv) Foreign Citizen + Non-Indian Origin (both) simultaneously is not permitted to acquire an immovable property through gift + inheritance (both)*

## **13. Acquisition of property through Inheritance from resident of India**

*(i) From NRI*

*(ii) From OCI*

*(iii) From Foreign Citizens + Non-Indian Origin (both) simultaneously*



## ***(B) Transfer of Immovable Property by Non Resident in India***

### ***14. Transfer by Non Resident through sale of immovable property in India***

- (i) Transfer through sale of immovable property by NRI*
  - (a) To Resident of India*
  - (b) To NRI*
  - (c) To OCI*
- (ii) Transfer through sale of immovable property by OCI*
  - (a) To Resident of India*
  - (b) To NRI*
  - (c) To OCI with permission from RBI*
- (iii) Transfer through sale of immovable property by Non Resident of 10 specified countries*
  - (a) To Resident of India with permission from RBI*
  - (b) To NRI with permission from RBI*
  - (c) To OCI with permission from RBI*
- (iv) Transfer through sale of immovable property by Foreign Citizens + Non-Indian Origin (both) simultaneously*
  - (a) To Resident of India with permission from RBI*
  - (b) To NRI with permission from RBI*
  - (c) To OCI with permission from RBI*

### ***15. Transfer through sale of Agricultural Land + plantation + farm house (any)***

- (i) NRI + OCI (both) permitted to sale an agricultural land + plantation property + farm house (any) to citizen + resident of India (both)*
- (ii) Foreign Citizen + Non-Indian Origin (both) simultaneously is permitted to sale an agricultural land + plantation property + farm house (any) to citizen + resident of India (both) with permission from RBI*

### ***16. Transfer by Non Resident through gift of immovable property in India***

- (i) Transfer through gift of immovable property by NRI + OCI (both)*



(a) To Resident of India

(b) To NRI

(ii) *Transfer through gift of immovable property by Foreign Citizen + Non-Indian Origin (both) simultaneously*

(a) To resident of India with permission from RBI

(b) To NRI with permission from RBI

### **17. Transfer through gift of agricultural land + plantation + farm house (any)**

(i) *Transfer through gift of immovable property by NRI + OCI (both)*

● To Citizen of India + resident of India (both) simultaneously

(ii) *Transfer through gift of immovable property by Foreign Citizen + Non-Indian Origin (both) simultaneously*

● To Citizen of India + resident of India (both) simultaneously with permission from RBI

### **18. Transfer by Non Resident through Mortgage of immovable property in India**

(i) *Transfer through mortgage of immovable property by NRI + OCI (both)*

(a) NRI + OCI (both) permitted to transfer through mortgage to AD Bank + Housing Finance Institution (any) *without* permission from RBI

(b) NRI + OCI (both) permitted to transfer through mortgage to bank outside India *with* permission from RBI.

(ii) *Transfer through mortgage of immovable property by Foreign Citizen + Non-Indian Origin (both) simultaneously*

Foreign Citizen + Non-Indian Origin (both) simultaneously is permitted to transfer *with* permission from RBI.

(iii) *Transfer through mortgage of immovable property by BO in India*

BO of foreign company in India is permitted to mortgage to AD Bank *without* permission from RBI



## ***(C) Payment for immovable property by Non Resident in India***

### ***19. Payment by NRI + OCI (both) for purchase of immovable property in India***

- (i) Through direct remittance from outside India with normal banking channel*
- (ii) Through debit to NRO account*
- (iii) Through debit to NRE account*
- (iv) Through debit to FCNR account*
- *However NRI + OCI (both) not permitted to make payment through traveler cheque + foreign currency notes + other mode (any)*

### ***20. Repatriation against non-allotment of immovable property in India***

- (i) AD bank is permitted to allow a credit into NRE + FCNR (B) account (any) for refund of application money or earnest money against non- allotment of immovable property + interest on application money or earnest money – (minus) TDS*  
*+ (plus)*
- (ii) Original payment against application money or earnest money already debited to NRE or FCNR (B) account or direct inward remittance through banking channel (only)*

### ***21. Housing loan for purchase of immovable property from bank + etc in India***

- (i) Housing loan for purchase of immovable property by Non Resident in India*
  - (a) The residential accommodation*
  - (b) The repair + renovation + improvement (any) for the residential accommodation*
- (ii) List of lender for housing loan for purchase of immovable property by Non Resident in India*
  - (a) Any AD bank in India*
  - (b) The Housing Finance Institution (HFI) in India*



- (iii) *Terms + Conditions for Housing loan against immovable property in India*
- (a) *Terms + conditions (both) be in accordance to Regulation No.08 of Notification No. FEMA 4/2000-RB, dated May 03, 2000*
- + (plus)*
- (b) *Terms + conditions (both) be in accordance to Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000*
- (iv) *Repayment against Housing Loan by Non Resident in India*
- (a) *Through direct inward remittance with normal banking channel*
- (b) *Through debit to NRE + FCNR (B) + NRO account (any) maintained in India*
- (c) *Through rental income on immovable property as purchased through housing loan*
- (d) *Through close relative as located in India*

## **22. Housing Loan for purchase of immovable property from employer in India**

- (i) *That Terms + conditions (both) be in accordance to Regulation No. 8A of Notification No. FEMA 4/2000- RB, dated May 03, 2000*
- + (plus)*
- (ii) *Also in accordance to A.P (DIR Series) Circular No. 27, dated October 10, 2003*
- (iii) *That loan be granted for purchase of housing property in India*
- (iv) *That loan be granted in accordance to employer's staff welfare scheme + staff housing loan scheme (any) applicable to other staff as resident of India*
- (v) *That employer be ensured as loan amount is not used for any other purpose*
- (vi) *That credit of loan be to NRO account*
- (vii) *That repayment be through remittance from outside India + debit to NRO + NRE + FCNR (B) account (any)*



## ***(D) Repatriation against Sale of immovable property by Non Resident***

### ***23. Repatriation by NRI + OCI (both) against sale of property in India***

- *AD bank is permitted to repatriate the sale proceeds against immovable properties subject to satisfaction of certain terms and conditions:-*
  - (i) *That Immovable property be acquired by seller in accordance to Foreign exchange law at time of acquisition + amount (both) paid through direct foreign remittance or debited to NRO or NRE or FCNR (B) account (any)*
  - (ii) *That amount of repatriation is not exceeding the amount as paid at time of purchase of immovable property in foreign exchange*

### ***24. Repatriation through NRO Account against sale of property in India***

- (i) *That sale proceed be from property as acquired in INR*  
*or*
- (ii) *That loan amount be paid by close relative as located in India*
- (iii) *That AD Bank is permitted to remit a maximum USD 1 million per financial year*
- (iv) *That permission from RBI is required for remitting as exceeding USD 1 million per financial year*

### ***25. Repatriation against sale of property as acquired under INR Loan in India***

- (i) *That NRI + OCI (both) permitted to repatriate the sale proceeds against residential accommodation as purchased through INR loan from AD Bank + housing finance institution (any) after the repayment of INR loan*  
*+ (plus)*
- (ii) *That balance (if any) to be credited to NRO account as maintained in India*  
*+ (plus)*
- (iii) *That NRI + OCI (both) permitted to repatriate a maximum USD 1 million per financial year through NRO account*



## **26. Repatriation against sale of property as acquired through gift in India**

(i) That sale proceeds of immovable property as acquired through gift be credited to NRO account

+ (plus)

(ii) That NRI + OCI (both) permitted to repatriate a maximum USD 1 million per financial year through NRO account

## **27. Repatriation against sale property as acquired through Inheritance in India**

(i) That amount as not exceeding a maximum USD 1 million per financial year

(ii) That NRI + OCI (both) required to submit documentary evidence in support of inheritance of assets like undertaking by remitter + certificate from CA (both)

(iii) That deed of settlement already made by parent + close relative (any)

(iv) That original deed of settlement be available for verification + tax clearance certificate is obtained from Income Tax Deptt. (both)

(v) That remittance in installment is permitted through same AD Bank (only)

(vi) That remittance to foreign citizen + Non-Indian origin (both) simultaneously is permitted with permission from RBI

(vii) That permission from RBI is required for repatriation of sale proceeds against immovable property by resident of 8 specified countries like:-

(a) Afghanistan

(b) Bangladesh

(c) China

(d) Hong Kong

(e) Iran

(f) Macau

(g) Pakistan

(h) Sri Lanka



(viii) Resident of 2 specified countries are permitted in INR (only)

(a) Bhutan

(b) Nepal

## 28. Repatriation against rental income on immovable property located in India

(i) NRI + OCI (both) permitted to give on rent the residential + commercial (both) properties without permission from RBI

(ii) (a) Rent can be credited to NRO + NRE (any) account

or

(b) Directly can be remitted outside India

(iii) Hence NRI + OCI (both) permitted to remit without crediting to NRO + NRE (any) account – (minus) TDS





***(E) Purchase + sale of immovable property by foreign embassy + etc.***

***29. Purchase + sale of Immovable Property by foreign embassy + etc. in India***

- (i) That regulation 5A of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 to be followed for purchase or sale by Foreign Embassy + Diplomat + Consulate general (any) in India*
- (ii) That not permitted to acquire an agricultural land + plantation property + farm house (any) in India*
- (iii) That clearance be obtained for purchase or sale from govt. of India, Ministry of External Affairs*
- (iv) That consideration be paid out of fund as remitted from outside India through normal banking channel for acquisition of immovable property in India*



## ***(F) Summary on Acquisition + Transfer without permission from RBI***

### ***30. Acquisition + Transfer (any) of Residential + Commercial (both) Properties***

#### ***(i) Acquisition or Transfer by NRI***

<i>Transaction</i>	<i>NRI</i>	<i>OCI</i>	<i>Resident</i>
<i>Purchase from</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Sell to</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Gift from</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Gift to</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Inheritance from</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>

#### ***(ii) Acquisition or Transfer by OCI***

<i>Transaction</i>	<i>NRI</i>	<i>OCI</i>	<i>Resident</i>
<i>Purchase from</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Sell to</i>	<i>Yes</i>	<b><i>No</i></b>	<i>Yes</i>
<i>Gift from</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
<i>Gift to</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>

### ***31. Acquisition of Agricultural land + plantation Property + Farm House (any)***

#### ***● Acquisition + Transfer by NRI + OCI (any)***

<i>Transaction</i>	<i>NRI</i>	<i>OCI</i>	<i>Resident</i>
<i>Purchase from</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Sell to</i>	<i>No</i>	<i>No</i>	<b><i>Yes</i></b>
<i>Gift from</i>	<i>No</i>	<i>No</i>	<i>No</i>
<i>Gift to</i>	<i>No</i>	<i>No</i>	<b><i>Yes</i></b>

- 100% Acquisition + transfer of immovable property including agricultural land plantation property + farm house (any) with permission from RBI is permitted.***
- However Non Resident is required to satisfy the RBI for granting an approval.***



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