



Acquisition of Immovable Property by Non Resident in India

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(A) Acquisition of Immovable Property by Non Resident

1. Introduction on Acquisition in India

- (i) (a) *Non Residents are permitted for acquisition through purchase + gift + inheritance of the immovable properties in India under the FEMA, 1999*
- (b) *Non Residents are permitted for transfer through sale to resident of India + non resident of India (both) but gift to resident of India (only) and also inheritance to resident of India (only) of the immovable properties under the FEMA (Acquisition and Transfer of Immovable property in India) Regulations, 2000 as amended from time to time through Notifications and Circulars of the RBI.*
- (ii) **Definition of Non-resident is including the followings:-**
- (a) **Non resident Indians (NRI's) under the Indian Citizen Act (ICA) 1955**
- *NRI = Non-resident of India + Indian Citizen ((Indian Passport holder)(both))*
- (b) **Foreign Citizens of Indian Origin as commonly known as Person of Indian Origin (PIO) under the ICA, 1955**
- *PIO = Non-resident of India + foreign Passport + Indian Origin (all together)*
- (c) **Foreign Citizens of Non-Indian Origin under the ICA, 1955**
- *Non NRI + PIO = Non Resident of India + foreign Passport + Non Indian origin (all together)*
- (iii) *RBI is not deciding the residential status as same being decided by operation of law under the FEMA, 1999*
- (iv) *Onus to prove the residential status is on the non resident where it is questioned by the govt. authorities*
- (v) *Resident of India but foreign citizen is treated as Not Permanent Resident (NPR) of India*
- (vi) (a) *Non-resident of India is permitted to hold + owned + transfer + invest in Indian currency, security or immovable property as situated in India where these were acquired, held or owned when he was resident of India*



or

(b) Non resident has inherited from a resident of India under the FEMA, 1999

2. Acquisition of Agricultural Land etc.

- (i) Non residents of India including NRI or PIO are not permitted to acquire an agricultural land, plantation property or farm house in India*
- (ii) Non residents are permitted to hold where these were acquired, held or owned when he was resident of India or he has inherited from resident of India*

3. Repatriation against Sale Proceeds from India

- (i) Non residents are permitted to repatriate maximum USD 1 million per financial year through NRO account as maintained in India*
- (ii) Maximum USD 1 million is also include the sale proceeds of the assets as acquired under inheritance or settlement in India*
- (iii) Maximum USD 1 million limit is not applicable for repatriation through NRE account where sale proceeds of immovable property is already deposited into NRE account through NRO account after TDS within maximum USD 1 million limit per financial year*

4. Acquisition through Purchase + Gift + Inheritance

- (i) Not permanent resident of India is permitted to acquire a residential or commercial property in India through purchase only under general permission route of the RBI*
- (ii) Not permanent resident of India including NRI or PIO from 10 specified countries are not permitted to acquire a residential or commercial property in India through purchase + gift + inheritance without the permission from the RBI. List of the 10 specified countries is as following:-*

(a) Pakistan

(b) Bangladesh

(c) Sri Lanka



(d) **Afganistan**

(e) **China**

(f) **Iran**

(g) **Nepal**

(h) **Bhutan**

(i) **Hong Kong**

(j) **Macau**

(iii) Documents for General Permission Route

- Non-residents are *not required* to *file* any *document* for *acquisition* of immovable properties under *general permission* route of the RBI.

(iv) Restriction on number of residential or commercial property

(a) *NRI* or *PIO* is *permitted* to *purchase* a *residential* or *commercial* property *without* any *restriction* on *number* of the *properties* for *investments* purpose only.

(b) *Henceforth* *NRI* or *PIO* is *permitted* to *purchase* an *unlimited* in *numbers* a *residential* or *commercial* property for *investments* purpose only.

(c) *NRI* or *PIO* is *not permitted* to *purchase* the *properties* for *trading* purpose

(d) *Difference* between for *investments* and for *trading* purpose of the immovable properties are always *debatable* as needed *reasonableness* in *period* of *holding* of the properties.

(v) Purchase of Immovable property by Foreign Citizens of Non-Indian Origin

(a) Foreign Citizens of *Non-Indian Origin* as *Not permanent resident* of *India* are *permitted* to *purchase* immovable property under *general permission* route under *FEMA, 1999*

(b) However the *abovementioned* Foreign Citizens of *Non-Indian Origin* are *required* to obtain *permission* from the *state govt.* where any *permission* is



prescribed for the Foreign Citizens of Non-Indian Origin as Not permanent resident of India.

(c) Permission from RBI for 10 specified countries

- *Permission from the RBI is required for purchase of immovable property by the Foreign Citizen or entity of the 10 specified countries.*

5. Purchase of Immovable property by foreign entity

● **Purchase through BO or PO**

(i) *BO or PO of foreign entity is permitted to purchase an immovable property without permission of the RBI where property purchase is necessary or incidental to carry on the business in India*

(ii) *Foreign entity is required to make the payment against immovable property through foreign inward remittance under normal banking channel*

(iii) *Foreign entity is required to file a declaration in Form IPI as to be filed with the RBI within 90 days from the date of purchase of property*

(iv) *Foreign entity is permitted to mortgage the property with AD bank as security for the borrowings by BO or PO*

(v) *Foreign entity is required to repatriate the sale proceeds on winding up of BO or PO with approval from the RBI*

(vi) Purchase through BO or PO as belonging to 10 specified countries

- *BO or PO belonging to the 10 specified countries is permitted with permission from the RBI where property purchase is necessary or incidental to carry on the business in India*

(vii) Purchase through LO

(a) *LO is not permitted to purchase an immovable property in India in any circumstance*



(b) *LO is permitted to take an immovable property on lease (rent) for a period not exceeding 5 years without permission from the RBI*

6. Acquisition through Gift

(i) *NRI or PIO is permitted to acquire through gift from:-*

(a) *Resident of India*

(b) *NRI*

(c) *PIO*

(ii) *NRI or PIO is not permitted to acquire through gift of followings:-*

(a) *Agricultural land*

(b) *Plantation Property*

(c) *Farm house*

(iii) *Hence NRI or PIO is permitted to acquire residential or commercial property only*

(iv) *Foreign Citizens of Non-Indian Origin are not permitted to acquire an immovable property through gift + inheritance (both)*

7. Acquisition through Inheritance from resident of India

● *Permitted to acquire through inheritance from:-*

(a) *NRI*

(b) *PIO*

(c) *Foreign Citizens of Non-Indian Origin*



(B) Transfer of Immovable Property in India

1. Transfer through sale of immovable property

(i) Transfer by NRI

NRI's are permitted to sale the immovable properties to the following persons only:-

(a) Resident of India

(b) NRI

(c) PIO

(ii) Transfer by PIO

PIO's are permitted to sale the immovable properties to the following persons only:-

(a) Resident of India

(b) NRI

(c) PIO with permission from the RBI

(iii) Transfer by Foreign Citizens of 10 specified countries

Foreign Citizens of Non-Indian Origin are permitted to sale the immovable properties to the following persons only with permission from the RBI:-

(a) Resident of India

(b) NRI

(c) PIO

2. Transfer through sale of Agricultural Land etc.

(i) *NRI or PIO is permitted to sale an agricultural land, plantation property or farm house to citizens + resident of India*

(ii) *Foreign Citizens of Non-Indian Origin is permitted to sale an agricultural land, plantation property or farm house to citizens + resident of India with permission from the RBI*



3. Transfer through gift of immovable property

(i) Transfer by NRI or PIO

NRI's or PIO's are *permitted* to *gift* the immovable properties to the *following* persons *only*:-

(a) **Resident of India**

(b) **NRI**

(ii) Transfer by Foreign Citizen of Non-Indian Origin

Foreign Citizens of *Non-Indian Origin* are permitted to *transfer* to *resident of India + NRI* (both) through *gift* the immovable properties *with permission* from the *RBI*

4. Transfer through gift of agricultural land etc.

(i) Transfer by NRI or PIO

NRI's or PIO's are *permitted* to *gift* the *agricultural land*, plantation property or farm house to the *following* persons *only*:-

- **Citizen + resident of India**

(ii) Transfer by Foreign Citizen of Non-Indian Origin

Foreign Citizens of *Non-Indian Origin* are permitted to *transfer* the *agricultural land*, plantation property or farm house *with permission* from the *RBI* and *transfer* to *resident + citizen* of *India* (only)

5. Transfer through Mortgage

(i) Transfer by NRI or PIO

(a) NRI or PIO is *permitted* to *transfer* through *mortgage* to *AD Bank* or *Housing Finance Institution* in *India* *without permission* from the *RBI*

(b) NRI or PIO is *permitted* to *transfer* through *mortgage* to *bank outside India* *with permission* from the *RBI*.



(ii) Transfer by Foreign citizen of Non-Indian origin

Foreign Citizens of *Non-Indian Origin* are *permitted* to *transfer* with *permission* from the *RBI*.

(iii) Transfer by BO

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

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(C) Payments for purchase of immovable property in India

1. Payment by NRI or PIO

(i) NRI or PIO is *permitted* to make *payment* through *direct remittance* from *outside India* with *normal banking channel* or *debit* to the *following* accounts *only* as maintained in India:-

(a) **NRE account**

(b) **FCNR account**

(c) **NRO account**

(ii) NRI or PIO is *not permitted* to make *payment* through *travelers cheque*, *foreign currency notes* or any *other mode*

2. Repatriation against non-allotment

(i) AD bank is *permitted* to allow a *credit* into **NRE** or **FCNR (B)** account of the NRI or PIO for *refund* of *application* money or *earnest money* against *non- allotment* of the immovable property along *with interest* after the **TDS**

(ii) However *original payment* for application money or earnest money *should* be *debited* to **NRE, FCNR (B)** account or *direct inward remittance* from outside India

3. Housing Loan for purchase

(i) **Housing loan for purchase is including the followings:-**

(a) For *purchase* of the *residential* accommodation

(b) For *repair*, renovation or *improvement* of the *residential* accommodation

(ii) **Lender for housing loan for purchase is including the followings:-**

(a) **AD bank in India**

(b) **Housing Finance Institution in India**

(iii) **Terms and Conditions include the followings:-**

(a) *Terms* and *conditions* should be in *accordance* to *Regulation No.08* of *Notification No. FEMA 4/2000-RB*, dated *May 03, 2000*



+

(b) *Terms and conditions* should be in *accordance* to Foreign Exchange Management (Borrowing and lending in rupees) *Regulations, 2000*

(iv) Repayment against housing Loan

- (a) Through inward *remittance* from *outside India* with normal *banking channel*
- (b) Through *debit* to *NRE, FCNR (B) or NRO* account as *maintained in India*
- (c) Through *rental income* from the immovable property as *purchased* through *bank loan*
- (d) Through *close relatives* as located in *India*

4. Housing Loan from employer in India

(i) Terms and conditions are including the followings:-

- (a) *Terms and conditions* should be in *accordance* to *Regulation No. 8A* of *Notification No. FEMA 4/2000- RB, dated May 03, 2000*
- +
- (b) In *accordance* to A.P (DIR Series) *Circular No. 27, dated October 10, 2003*
- (c) *Loan* should be *granted* for *purchase* of *housing property* in *India*
- (d) *Loan* should be *granted* in *accordance* to employer's staff *welfare scheme* or *staff housing loan scheme* as *applicable* to other staff as resident of *India*
- (e) *Employer* should *ensure* *loan* amount is **not used** for any *other purpose*
- (f) *Credit* of *loan* should *be* to *NRO* account
- (g) *Repayment* should be through *remittance* from **outside India** or *debit* to *NRE, NRO or FCNR (B) account*



(D) Repatriation against Sale of immovable property from India

1. Repatriation by NRI or PIO

(i) AD bank is permitted to repatriate the sale proceeds against immovable properties subject to satisfaction of the following terms and conditions:-

(a) Immovable property should be acquired by the seller in accordance to Foreign exchange law at time of acquisition + amount should be paid through direct foreign remittance from outside India or debited to NRE, FCNRC (B) or NRO account

(b) Amount of repatriation should not exceed the amount as paid at the time of purchase of immovable property in foreign exchange

2. Repatriation through NRO Account

(i) Sale proceed should be out of the property as acquired out of rupee resources
or

(ii) Loan amount is being repaid by the close relative in India

(iii) AD Bank is permitted to remit maximum USD 1 million per financial year

(iv) Permission from the RBI is required for remitting an amount exceeding USD 1 million per financial year

3. Repatriation of Sale Proceed of Property Acquired against Rupee Loan

(i) NRI or PIO is permitted to repatriate sale proceeds of residential accommodation as purchased through loan from Indian AD Bank or from housing finance institution after repayment of loan through foreign inward remittance

(ii) Balance if any be credited to NRO account

(iii) NRI or PIO is permitted to repatriate maximum USD 1 million per financial year through NRO account maintained in India

4. Repatriation of sale proceed of property acquired through Gift

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



(ii) NRI or PIO is permitted to **repatriate** maximum **USD 1 million** per financial year through **NRO account** maintained in India

5. Repatriation of sale proceeds of property acquired through Inheritance

(i) NRI or PIO is permitted to **repatriate** sale **proceeds** of immovable property as **inherited** from **resident of India** subject to **satisfaction** of the following terms and **conditions**

(a) **Amount** should **not exceed** maximum **USD 1 million** per financial year

(b) NRI or PIO is required to **submit** documentary **evidence** in support of **inheritance** of **assets** like an **undertaking** by remitter + **certificate** from **CA**

(c) **Deed of settlement** should be made **by parent** or **close relative**

(d) **Original deed** of settlement for **verification** + **tax clearance certificate** from **Income Tax Deptt.**

(e) **Remittance** in **installment** is also permitted through **same AD Bank**

(f) **Remittance** to foreign citizens of **Non-Indian origin** is permitted **with permission** from the **RBI**

(ii) **With permission** from the **RBI** is required for **repatriation** of sale **proceeds** of immovable property by the **foreign citizens** of the **8 specified countries**:-

(a) **Pakistan**

(b) **Bangladesh**

(c) **Sri Lanka**

(d) **China**

(e) **Afghanistan**

(f) **Iran**

(g) **Hong Kong**

(h) **Macau**

(iii) **Foreign citizen of 2 specified countries are permitted an Indian Rupees (INR) only**:-

(a) **Nepal**

(b) **Bhutan**



6. Repatriation against Rental income

- (i)** NRI or PIO is *permitted* to *rent* out *residential* or *commercial* property *without permission* from the *RBI*

- (ii)** (a) *Rent* can be *credited* to *NRO* or *NRE* account
or
(b) *Directly* can be *remitted* outside India

- (iii)** *Henceforth* NRI or PIO is *permitted* to remit *without crediting* to *NRO* or *NRE* account after *TDS*



(E) Purchase and sale of immovable property by foreign embassies etc.

- ***Purchase or sale of Immovable Property***

- (i) Regulation 5A of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 is applicable for purchase or sale by Foreign Embassies and Diplomats or Consulates general in India***
- (ii) However not-permitted to acquire any agricultural land, plantation property or farm house in India***
- (iii) Clearance from the Govt. of India, Ministry of External Affairs is required for purchase or sale***
- (iv) Consideration for acquisition of immovable property in India is to be paid out of fund as remitted from outside India through normal banking channel***



(F) Conclusion on Acquisition + Transfer without permission from RBI

1. Residential or Commercial Property

(i) By NRI

Transaction	NRI	PIO	Resident
Purchase from	Yes	Yes	Yes
Sell to	Yes	Yes	Yes
Gift from	Yes	Yes	Yes
Gift to	Yes	Yes	Yes
Inheritance from	Yes	Yes	Yes

(ii) By PIO

Transaction	NRI	PIO	Resident
Purchase from	Yes	Yes	Yes
Sell to	Yes	NO	Yes
Gift from	Yes	Yes	Yes
Gift to	Yes	NO	Yes

2. Agricultural land or plantation Property or Farm House

• By NRI or PIO

Transaction	NRI	PIO	Resident
Purchase from	NO	NO	NO
Sell to	NO	NO	Yes
Gift from	NO	NO	NO
Gift to	NO	NO	Yes



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