

Problem versus Solution for Investment by NRI or PIO in India

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(A) **Problem** for Non Resident Indian (NRI) or Person of Indian Origin (PIO)

- 1. Problem for Not permitted as investment in prohibited business + activity:
 - (i) Business of Chit fund
 - (ii) Business of Nidhi
 - (iii) Business of Real estate trading
 - *(iv) Construction of farm house*
 - (v) Trading in Transferable Development Rights (TDRs)

2. **Problem for Not permitted a remittance from India**

- (i) AD banks are not permitted for a remittance as exceeding USD 1 million in a financial year from NRO rupee account as maintained in India
- (ii) AD banks are also not permitted for a remittance against not permitted purpose
- 3. Problem for Not Permitted a Remittance in Foreign Currency to Nepal or Bhutan
 - AD banks are not permitted to remit in foreign currency to a citizen of Nepal or Bhutan.

4. **Problem** for legal rights against investment in immovable property

- (i) NRI or PIO has always confusion for legal rights against investment in immovable property specifically in India where unlicensed + unreliable real estate brokers are engaged for selling of illegal lands consequently 100% loss of the money as invested in a land due to lack of clarity on the legal rights in favor of the NRI or PIO investors.
- (ii) NRI or PIO is finding problem for updating about the latest news + reform in Indian real estate market due to his limitation of physical presence in India.

5. **Problem for finding Non Dubious builder for investment in immovable property**

 NRI or PIO is suffering due to investment in wrong project or wrong work which is always delayed because of the dubious builder

6. **Problem for checking of background of dubious or non dubious builder**

(i) NRI or PIO is suffering due to extra ordinary delay in checking of background of dubious or non dubious builder which is ultimately leading to a delay in investment.

(ii) Many times these delay in investment are also pinched by NRI or PIO where he has already kept money lying in his NRE, NRO or FCNR (B) Account

7. **Problem** for finding responsible experienced + credential professional

• NRI or PIO is suffering due to dubious advisor who is taking benefit as NRI or PIO is not physically presence in India for the purpose of his tax planning + real estate investment + filling of ITR + TDS matter + mutual fund and share investment + other permitted investment etc.

8. **Problem** for Taxation in India with Discrimination for NRI or PIO

- (i) Income tax provisions under the Income Tax Act (ITA) 1961 + Income Tax Rules under the Income Tax Rules (ITR) 1962 are mostly different for the resident of India and NRI or PIO.
- (ii) Although NRI or PIO is not required to pay Income tax on the incomes as earned or accrued outside India. Hence NRI or PIO is required to pay Income tax on the Indian incomes only.

9. **Problem for obtaining a legal title against purchase of immovable property**

• NRI or PIO is having several problem in obtaining a legal title against immovable property as located in India like sale + repatriation out of sale proceeds + fair market value (FMV) etc.

10. Problem for selecting a method for sale of immovable property

- (i) NRI or PIO is having a problem for selecting a method for sale of immovable property whether to be handled by him or hiring the services of professionals those can substitute NRI or PIO himself.
- (ii) Indian immovable property market is in the hands of unlicensed + unreliable real estate brokers those credentials are also not bona fide.
- (iii) Rates for immovable properties are actually varied vary vastly within same area + most of brokers are not licensed from the RERA and also not worth of trusting
- (iv) 100% process for sale of immovable properties is most cumbersome for NRI or PIO who is not familiar with the Indian market without help of genuine hands in India.

- (v) In India transparency is a big challenge against actual sale price (ASP). NRI or PIO generally get carried away with the price as offered (quoted) by the unlicensed + unreliable real estate brokers when there is no authentic process to confirm the ASP.
- (vi) We have observed that many times these unlicensed + unreliable real estate brokers are building their high margins an over and above the declared sale value to NRI or PIO as depriving him from actually realized ASP by these brokers.

11. Problem for completing a sale transaction

- (i) **Problem for identifying a correct sale price + managing the structure a** transaction
 - (a) We have observed that unlicensed + unreliable real estate brokers are taking advantage of NRI or PIO who is sitting at very distained location which is commonly known as across 7 seas. Hence these brokers are manipulating the ASP through replacing with forged sale price (FSP)
 - (b) We have further observed that these real estate brokers are also taking advantage through manipulating between the cash sales price and the cheque sale price
 - (c) We have further observed that these real estate brokers are also taking advantage through misrepresenting the agreement to sale (ATS) of ASP and ATS of cheque sale price which are obviously executed at different sale price.

(ii) **Problem for Issuing a Power of Attorney (PoA)**

We have observed that a misconception is in practice that a NRI or PIO have to issue a mandatory PoA in favor of resident of India for execution of document in absence of his physical presence in India.

12. **Problem for taxation + repatriation matters**

- We have observed that NRI or PIO is facing the problem in taxation + repatriation matters
- (i) (a) NRI or PIO is required to file Income tax return (ITR) and to offer Indian incomes in India and also outside India (at both places). Hence NRI or PIO is required to do the same exercise at both places

- (b) NRI or PIO is required to get income tax refund from the Income tax deptt. in India where TDS is actually deposited by purchaser on the gross sale price (GSP) instead of amount of actual long term capital gain (LTCG) amount only
- (ii) NRI or PIO is not permitted to remit exceeding USD 1 million in a financial year from a NRO account as maintained in India where immovable property was purchased in INR only.

13. **Problem** for increasing in foreign currency conversion rate against INR

• We have observed that NRI or PIO is facing problem in investment in India as conversion rates of foreign currencies are increasing day by day like USD 1 was equivalent to INR 1 in year 1947 where USD 1 is equivalent to INR 80 in current year (2022)

(B) Solution for Non Resident Indians (NRI) or Person of Indian Origin (PIO)

1. Solution for Not permitted as investment in prohibited business + activity:

- (i) **Business of Chit fund company**
 - Permitted with approval from the RBI through best presentation + representation before the RBI to justify the reasons for approval against business of chit fund company

(ii) **Business of Nidhi company**

• Permitted with approval from the RBI through best presentation + representation before the RBI to justify the reasons for approval against business of Nidhi company

(iii) Business of Real estate trading

• Permitted with approval from the RBI through best presentation + representation before the RBI to justify the reasons for approval against business of Real estate trading

(iv) Construction of farm house

• Permitted with approval from the RBI through best presentation + representation before the RBI to justify the reasons for approval against Construction of farm house

(v) **Trading in Transferable Development Rights (TDRs)**

Permitted with approval from the RBI through best presentation + representation before the RBI to justify the reasons for approval against Trading in Transferable Development Rights (TDRs)

2. Solution for Not permitted a remittance from India:-

- (i) Permitted under automatic route for development of townships in India
- (ii) Permitted under automatic route for construction of residential premises in India
- (iii) Permitted under automatic route for construction of commercial premises in India
- (iv) Permitted under automatic route for construction of roads in India
- (v) Permitted under automatic route for construction of bridges in India

3. Solution for Not Permitted a Remittance to Nepal or Bhutan

• *AD banks are permitted to remit in INR to a citizen of Nepal or Bhutan.*

4. Solution for legal rights against investment in immovable property

• It is suggested that NRI or PIO should appoint an experienced + credential professional before signing any document or transferring any money to the seller.

5. Solution for finding Non Dubious builder for investment in immovable property

- (i) It is suggested that NRI or PIO should check track record of builder on the RERA website
- (ii) He should check the reviews as given by the previous homebuyers from the builder
- (iii) He should also verify the project as available on real estate portal of an association

6. Solution for checking of background of dubious or non dubious builder

• It is suggested that NRI or PIO should use the banking services of the private banks like HDFC, ICICI, Axis or Kotak etc Bank where these banks have a smooth process and have credibility in the market comparative to PSU banks like Canara, PNB, Central etc. bank

7. Solution for finding responsible experienced + credential professional

• It is suggested that NRI or PIO should appoint an responsible experienced + credential professional for tax planning + real estate investment + filling of ITR + TDS + mutual fund and share investment + other permitted investment etc matters

8. **Solution** for Taxation in India with Discrimination for NRI or PIO

- (i) It is suggested that NRI or PIO should appoint a responsible experienced + credential professional to guide from time to time for income tax + TDS + investment matters to avoid the actual effect of tax discrimination in India.
- (ii) Advices from above mentioned professional should be taken for every small or big investment against income tax + TDS matters in India.
- (iii) Hence NRI or PIO should take right direction from the professional to have hasslefree against income tax + TDS matters in India.

9. Solution for obtaining a legal title against purchase of immovable property

• NRI or PIO is having several problem in obtaining a legal title against purchase of immovable property in India and also against sale + repatriation of sale proceeds + fair market value (FMV) etc. The solutions are as under:

(i) Transfer of legal title against inherited immovable property in favor of NRI or PIO

- (a) It is suggested that NRI or PIO should have mutation in revenue records of the state govt.
- (b) It is suggested that NRI or PIO should have copy of will as executed by deceased person or a succession certificate as issued by the local court.

(ii) **Documentation of legal title against inherited immovable property by NRI or PIO**

- (a) It is suggested that NRI or PIO should keep the following documents after transfer of legal title against an immovable property
 - Original purchase agreement (OPA) as received from seller
 - Original share certificate for a unit in a Co-operative housing society
 - Original share certificate as issued by a Co-operative housing society or
 - Duplicate share certificate as issued by a Co-operative housing society where original certificate is misplaced
 - No objection certificate (NOC) from a Co-operative housing society. should be obtained before sale of the unit that default or outstanding payment is not pending towards a co-operative housing society.
 - *Copy of approved plan and occupation certificate (OC) as issued by concerned authority like MCD in Delhi should be obtained*
- (b) It is suggested that NRI or PIO should keep in safe custody a copy of approved plan and occupation certificate (OC) as above mentioned
- (c) It is suggested that NRI or PIO should obtained a certificate from approved lawyer that he is a rightful owner of the immovable property based on his search and title report of the immovable property as to be received from office of registrar where original legal title of the immovable property is misplaced

(d) It is suggested that NRI or PIO should obtained Permanent Account Number (PAN) from Income tax department in India before sale of any immovable property for applying lower tax deduction or 100% tax exemption certificate under section 197 of Income Tax Act (ITA) 1961. Indian citizen is required to apply for PAN through form 49A and foreign citizen to apply for PAN through form 49AA

10. Solution for selecting a method for sale of immovable property

- NRI or PIO is having a problem for selecting a method for sale of immovable property in India
- (i) It is suggested that NRI or PIO should appoint responsible experienced + credential professional to handle a sale transaction against immovable property in India
- (ii) Abovementioned professional can also guide in taking decision either to sale or to rent out the immovable property + taxation + TDS + legal matters etc in India.

11. Solution for completing a sale transaction

- (i) **Problem for identifying the correct sale value + Managing the structure of** transaction
 - (a) It is suggested that NRI or PIO should appoint responsible experienced + credential professional to help in arriving at fair market price (FMP). Hence the professional will help in obtaining correct sales price (CSP) through using the services of experienced registered valuer as active in the location where the immovable property is located.
 - (b) It is suggested further that NRI or PIO should have sale transaction of immovable property 100% in cheque to avoid the cash portion of the sales consideration + to have 1 ATS only instead of 2 ATS as 1 ATS for ASP and 1 ATS for cheque sale price.

(ii) Solution for Issuing a Power of Attorney (PoA)

(a) It is suggested that NRI or PIO should issue a PoA as an admit PoA to represent the PoA holder before office of registrar where physical presence of him is not possible in India

- (b) It is also suggested that NRI or PIO should physically presence in India minimum at 2 occasions as 1st at time of execution of ATS and 2nd at time of execution of sale deed of the immovable property. Hence 100% signing of the documents should be by him.
- (c) It is suggested further that NRI or PIO should sign the PoA in front of Indian Consulate outside India which is to be accepted by the office of registrar in India. Hence drafting of PoA can be in India in favor of close relative or friend to complete the execution of ATS + execution of sale deed in India

12. Solution for taxation + repatriation matters

(i) Solution for taxation matters

- (a) It is suggested that NRI or PIO should sale the immovable property after completion of 3 years from date of purchase to avail concessional long term capital gain (LTCG) @ 20% + cesses @ 4% + surcharge @ as applicable in accordance to the slab of income.
- (b) It is further suggested that NRI or PIO should apply for lower rate of TDS. Hence in absence of lower rate of TDS certificate the buyer of immovable property is to deduct TDS @ 20% + cesses @ 4% + surcharge on net sale value (NSV) instead amount of LTCG

(ii) Solution for repatriation matters

(a) It is suggested that NRI or PIO should advice to the buyer of immovable property to make a direct repatriate from India where he had already purchased the immovable property out of direct foreign inward remittance from outside India or debited to NRE or FCNR (B) Account as maintained in India

or

(b) It is suggested that NRI or PIO can advice to the buyer of the immovable property to transfer to NRO account as maintained in India where he had not purchased the immovable property out of direct foreign remittance from outside India or debited to NRE or FCNR (B) Account as maintained in India

13. Solution for increasing in foreign currency conversion rate against INR

- (i) It is suggested that NRI or PIO should deposit in FCNR (B) account as maintained in India where he is eligible to have interest income + principle amount (both) in foreign currency
- (ii) (a) NRI or PIO is permitted not to offer interest income on deposit in FCNR (B) account as Indian income to the Income tax dept in India.
 - (b) Hence interest income on deposit in FCNR (B) account is exempted in India.
 - (c) However interest income on deposit in FCNR (B) account as maintained in India is taxable in the country in which NRI or PIO is a resident.

14. Solution for remittance as miscellaneous from India

- AD banks are permitted to remit from NRO rupee account as maintained in India
- (i) Permitted as remittance by retired NRI or PIO from an employment in India
- (ii) Permitted as remittance by NRI or PIO which is already credited into NRO rupee account when NRI or PIO was resident of India
- (iii) Permitted as remittance by NRI or PIO who has acquired through inheritance from a resident of India
- (iv) Permitted as remittance by widow who has inherited the assets of her deceased husband
- (v) Permitted as remittance by NRI or PIO who has came for study or training + completed his study or training

15. Solution for remittance from outside India against business + activity in India:

- (i) *Permitted as remittance direct from outside India through normal banking channel*
- (ii) **Permitted as debit to certain bank accounts**:
 - (a) Foreign currency Non-resident (FCNR) bank account in India
 - (b) Non-resident external (NRE) Rupee bank account in India
 - (c) Non-resident ordinary (NRO) Rupee bank account in India

- 16. Solution for Remittance to outside India against sale proceed of Asset
 - Authorized dealer (AD) Banks are permitted to remit against the following assets:
 - (*i*) Out of deposits with banks + partnership firm + company
 - *(ii) Out of balance as provident fund + superannuation benefits*
 - (iii) Out of amount of claim + maturity proceeds of Insurance policy
 - (iv) Out of sale proceeds of shares + securities + immovable property + any other asset
 - However AD banks are permitted for remittance in accordance with the provisions of Act, Rules or regulations of the RBI

17. Solution for remittance from India

- (i) AD banks are permitted for remittance as exceeding USD 1 million in a financial year with the approval from the RBI through best presentation + representation before the RBI to justify the reasons for approval
- (ii) AD banks are permitted for remittance against not permitted purpose also with approval from the RBI through best presentation + representation before the RBI to justify the reasons for approval

18. Solution for Remittance an exceeding USD 1 Million Per Financial Year

• AD banks are permitted to exclude out of monetary limit of USD 1 million per financial year against the sales proceed of shares + immovable properties which were acquired by the direct remittance through banking channel in the foreign currencies on repatriation basis.

19. Solution for Remittance in Installments from NRI or PIO

AD banks are permitted to receive in installment through same authorized dealer bank only.

20. Solution for Lock-in-Period against NRI or PIO

• NRI or PIO is permitted to remit against sale proceeds of immovable property purchased by him out of INR funds without lock-in-period but within USD 1 million per financial year

21. Solution for Remittance against Current Income:

- (i) Remittance against current income is permitted without monetary limit like USD 1
 million per financial year
 - (a) *Rental* Income
 - (b) Dividend Income
 - (c) Pension Income
 - (d) Interest Income
- (ii) Remittance against current income is also permitted without routing through NRO Rupee account. Hence permitted for direct remittance outside India to payee by the payer against current income

22. Solution for Credit of Current Income into NRE Rupee Account

- (i) NRI or PIO is permitted to get credit the current income into NRE rupee account where AD banks are satisfied that credit represent current income only
- (ii) Tax Deducted at Source (TDS) + deposited by the payer of current income with the Income tax dept.

23. Solution for Issuing an International Credit Card to NRI or PIO

- (i) AD banks are permitted to *issue* an International Credit Card to NRI or PIO without approval from the RBI
- (ii) (a) NRI or PIO is required to settle the payment against International credit card through foreign currency inward remittance from outside India
 - or (b) Debit to FCNR (B) account, NRE rupee account or NRO rupee account in India

24. Solution for Banking Facilities for Returning NRI or PIO to India

- (i) (a) Permitted for continuing to hold + own + transfer + invest in foreign currency outside India
 - (b) Permitted for continuing the foreign security or immovable property an outside India
- (ii) Permitted for holding the assets outside India where NRI or PIO has acquired the assets during his non-resident of India status

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25. Solution for opening of Resident Foreign Currency (RFC) Account by Returning NRI or PIO to India

- (i) Permitted for opening + holding + maintaining a RFC account for transferring his balance as available in the existing FCNR (B) account or NRE rupee account.
- (ii) Permitted for getting a credit into RFC account out of sale proceeds of the assets as held outside India
- (iii) Permitted for utilizing of the balance as available in RFC account as free from all (100%) restrictions relating to utilization + investment in any form outside India
- (iv) Permitted for opening 3 types of RFC Accounts:-
 - (a) Current Account
 - (b) Saving Account
 - (c) Term Deposit Account

26. Solution for Changing of Residential Status by returning NRI or PIO

- (i) **Permitted for changing the NRE rupee account**
 - (a) Permitted for changing the NRE rupee account into resident rupee account after changing of residential status as resident of India.
 - or
 - (b) Permitted for transferring the NRE rupee account into RFC account
- (ii) **Permitted for changing the FCNR (B) Account**
 - (a) Permitted for changing the FCNR (B) Account into resident rupee account after changing of residential status as resident of India.

or

- (b) Permitted for transferring the FCNR (B) Account into RFC account
- (c) Permitted for continuing the deposits in FCNR (B) account till date of maturity where NRI or PIO is desiring
- (d) Permitted for continuing the rate of interest as applicable on FCNR (B) account where FCNR (B) Account is continued till date of maturity.

- (e) AD banks are permitted to convert the FCNR (B) account into resident rupee deposit account or in RFC account in India after date of maturity.
- (f) Permitted for new rate of interest after conversion into resident rupee account or in RFC account in India

(iii) **Permitted for changing the NRO Rupee Account**

- (a) Permitted for converting the NRO rupee account into resident rupee account or in RFC account in India
- (b) Permitted for new rate of interest after conversion into resident rupee account or in RFC account in India

27. Solution for Appointment of licensed + reliable real estate broker

It is suggested that NRI or PIO should appoint a licensed real estate broker who is registered with RERA for investment in immovable property to avoid confusion for legal rights in purchase of land

28. Solution for expected problem for investment in immovable property

- (i) NRI or PIO is required to have certain documents before investing in India:
 - (a) Copy of *passport* for NRI or PIO
 - (b) Copy of passport + copy of overseas citizen of India (OCI) card for Indian origin foreign citizen where already issued by the Indian Embassy or consulate outside India
 - (c) Copy of Address proof like driving license, residency card or citizenship card etc
 - (d) Copy of permanent account number (PAN) as obtained from Income tax dept. in India
 - (e) Original recent photograph
- (ii) NRI or PIO is required to understand the relevant rules and regulations under the FEMA, 1999 to find eligibility for purchasing any immovable property in India.
 However NRI or PIO are not permitted for purchasing of any agricultural land, plantation property or farm house in India.

- (iii) NRI or PIO is required to decide about the mode of payment through direct remittance in foreign currency through normal banking channel or debit to FCNR
 (B), NRE or NRO account.
- (iv) NRI or PIO is permitted to take housing loan from the banks or financial institutions in India + to repay the housing loan through direct remittance in foreign currency through normal banking channel or debit to FCNR (B), NRE or NRO account.
- (v) NRI or PIO is required to ensure that price + title of the immovable property as to be purchased is correct. Preferably middle man should be avoided. Hence direct deal with seller should be preferred.
- (vi) NRI or PIO is permitted to purchase an immovable property through POA as already given to the close relative or close friend.
- (vii) NRI or PIO is required to ensure a mandatory background check of the builder
- (viii) NRI or PIO is required to ensure that 100% tax liabilities + legal disputes are already resolved against the immovable property to be purchased in India.

29. Solution for illegal possession of immovable property

- (i) (a) It is suggested that NRI or PIO is required to ensure that possession of an immovable property is in the hands of seller only.
 - (b) It is observed that in many cases illegal person is occupying the immovable property without owner permission + enjoying the property peacefully without interruption of actual owner in a hostile manner for a period exceeding 12 years.
 - (c) Hence in this situation Indian law is allowing the person who is having illegal possession to claim his ownership through adverse possession.
- (ii) It is suggested that NRI or PIO is required to vigilant against illegal possession.
 Hence NRI or PIO should keep eye open on the tenant to avoid any fraud with him.
- (iii) General suggestions for NRI or PIO against illegal possession of immovable property
 - (a) NRI or PIO is required to change the tenant to avoid illegal possession of immovable property. Hence NRI or PIO is required to change the tenant after 11 months + renew tenancy agreement in accordance to the comfortableness

- (b) NRI or PIO is required to have construction of boundary wall to avoid the illegal possession of immovable property.
- (c) NRI or PIO is required to keep a legal caretaker or visit personally with regular intervals
- 30. Professional guidance for solution against problem for investment
 - Some of selected Articles for guidance against problem for investment
 - (i) Investments by NRI + PIO in India by CA. Satish Agawal http://femainindia.com/Image/Non%20Resident.pdf
 - (ii) Remittance and Banking by Non Resident of India by CA. Satish Agawal <u>http://femainindia.com/Image/Remittance%20-%202022.pdf</u>
 - (iii) Foreign Investments (FIs) by Non-Residents in India by CA. Satish Agawal http://femainindia.com/Image/FIs-22.pdf
 - (iv) Acquisition of Immovable Property by Non Resident in India http://femainindia.com/Image/Acquisition123.pdf

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