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Non-Resident Indian

All you need to know about investing



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From the Editor's Desk

Over last couple of decades, Indians have globally established themselves not only as respectable and hardworking workforce but have also become smart entrepreneurs. This has led to many Indians settling down in foreign lands and becoming Non-resident India or what is commonly termed as NRI.

NRI's are governed by a different set of laws with regards to investment and taxation. An NRI has to deal with a number of rules and regulations. These regulations are neither stringent nor in any way threatening, however due to lack of clarity an NRI finds himself in a maze of uncertainty.

In this issue of Punji Times, we have compiled all the information that an NRI will find it convenient to untangle the Gordian Knot of rules and regulations. We hope that issues would become a handy booklet for NRIs, whenever faced with any questions on investment or taxation in India

Best,

Team Meri Punji



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When NRI receives Gifts and Inheritances

An NRI can hold, receive as inheritance or as Gift the below types of assets in India-

(i) Liquid funds, (ii) Immovable properties, (iii) Shares and securities, (iv) Interest in LLP, and (v) Valuables such as jewellery, paintings, art pieces, bullion etc.

Any inheritance or gift to NRI from India may have the implications under the below regulations-

1. FEMA Regulations 2. Income Tax Act. 1961 (ITA)

1. FEMA Regulations

FEMA has different implications on different types of assets received as Gift/ inheritance by the NRI.

i. Money/ liquid funds

RBI has introduced the Liberalized Remittance Scheme ("LRS"), under which, a resident individual can remit overseas up to USD 250,000 per financial year. Such remittances are permitted for permissible current or capital account transactions and also can be for gift in foreign currency made to any NRI/PIO, there is no requirement for the donor and the recipient to be related for giving a gift

of money under the LRS and within the permitted limit of USD 250,000. In a case where such a gift is received from a distant relative (in excess of INR 50,000), while the same would be permissible under FEMA, such receipt would become taxable in the hands of the NRI recipient under section 56(2) (x) of the ITA.

As per the FAQ on RBI website, a resident individual can make a rupee gift to an NRI/PIO who is a close relative of the resident individual by way of crossed cheque /electronic transfer. The amount should be credited to the Non-Resident (Ordinary) Rupee Account (NRO) 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.

"Relative" here means the spouse, father, mother, son, son's wife, daughter, daughter's husband, brother and sister of the individual (As per the Companies Act, 2013). Under FEMA, the relative definition is narrower than ITA.

In case of money already held by NRI in India or where the NRI inherits liquid funds from a resident in India, the remittance of such funds out of his NRO account is limited to USD 1 million per financial year.

ii. Immovable property

NRI can acquire an immovable property in India by way of gift from a resident person, except the agricultural land/ farm house/ plantation property.

The sale proceeds of any such asset can be remitted by the NRI/ PIO outside of India only to the extent of USD 1,000,000 per financial year, which is an overall limit on remittance of proceeds from the NRO account. This is also applicable where the property has been received by the NRI/ PIO by way of inheritance/ legacy.

Under FEMA, donor and the recipient of the immovable property transferred

without any consideration need not be related and the gift of immovable property is permitted by a resident non-relative. However, under the ITA, where an NRI receives gift from a non-relative, such receipt would be taxable under the ITA where the stamp duty value would be the basis for computing deemed income.

iii. Shares and securities in an Indian company

Where a resident individual holds capital instruments (equity shares, debentures, preference shares and share warrants) in an Indian company, such capital instruments are permitted to be transferred to an NRI by way of a gift subject to a prior approval from the Reserve Bank of India and fulfilment of the following conditions-

- The NRI recipient is eligible to hold such a security under relevant Regulations;
- The gift does not exceed 5% of the paid-up capital of the Indian company;
- The applicable sectoral cap in the Indian company is not breached;
- The donor and the recipient are 'relatives' within the meaning in section 2(77) of the Companies Act, 2013; and
- The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of USD 50,000.

Gift of shares and securities are strictly regulated by the FEMA provisions – not only being restricted to a certain quantum but also requiring a prior approval from the Reserve Bank of India and the parties to the gift transaction are required to be "relatives". However, as discussed above, there will be no tax implications if the shares and securities are received from a relative, but, if received from a non-relative, the fair market value of such shares would be considered as the basis for computing the deemed tax liability in the hands of the NRI recipient.

In relation to inheritance, there is no such restriction and NRI can inherit the capital instrument, but, remittance of sale proceeds (post capital gains tax) will have to be within the USD 1 million limit as explained above.

iv. Interest in LLP

NRI is permitted to contribute to the capital of an LLP (engaged in sectors where 100% FDI is allowed under automatic route). However, there is no specific mention of transfer of an interest in LLP held by a resident to NRI in the FDI policy. The schedule prescribes the pricing guidelines to be adhered to for every transfer of capital contribution from a resident to a person resident outside India.

Relying on the general principle that Capital Account transactions (i.e. where the assets in India are impacted) are prohibited, unless specifically permitted, since the Regulations do not specifically permit it, gift of an interest in LLP to an NRI is not permitted at all.

The definition of "property" under the ITA, does not include interest in LLP and therefore, a transfer of such interest, even from a non-relative, would not attract any tax implications. As such, it appears that regardless of the non-taxability, there seems to be a prohibition on gift of interest in LLP to NRI under FEMA.

No such restriction on inheritance and no tax implications except the USD 1 million cap on remittance of the transfer proceeds.



When NRI receives Gifts and Inheritances

2. Provisions under the Income-tax Act, 1961 ("ITA")

The Gift Tax Act in India has been repealed thereby no tax on either donor or donee in case of a gift.

However, the ITA has provisions for gift which is covered under section 56(2)(x) and any person receiving:

- (i) a sum of money,
- (ii) an immovable property, or
- (iii) any other "specified property",

from any other person without consideration or for a consideration less than the fair market value of such property (stamp duty value in case of immovable property) is liable to tax on such receipt, on the quantum of the gift. Other specified property has been defined to mean eight items in addition to immovable property viz. shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

However, in case of individuals, receipt of either cash or immovable property or other specified property under the following circumstances is not to be subject

to tax in the hands of the recipient:

1. receipt from relatives;
2. receipt on the occasion of marriage;
3. receipt under a Will;
4. receipt by way of inheritance;
5. receipt in contemplation of death of the donor; or
6. receipt by a trust created solely for the benefit of the relative.

For the purposes of this section, the term "relatives" has been defined



to mean spouse, brother, sister, any lineal ascendant or descendant of the individual; brother/ sister of the spouse; brother/ sister of either of the parents of the individual; any lineal ascendant or descendant of the spouse; and spouse of such specified relatives.

Therefore, receipt of cash or other assets such as immovable property, shares and securities by Non-Resident Indians ("NRIs") from their Resident relatives are tax exempt. It is also important to note that the definition of "property" does not include interest in LLP and therefore, a transfer of such interest, even from a non-relative, would not attract any tax implications.

While analysis of the ITA aids in comprehending tax implications arising out of transactions, FEMA regulations play a role in determining whether a particular transaction is permissible, in the context of NRIs. FEMA regulations, governing the gifts, are discussed below. Inheritance of monetary as well as non-monetary assets by NRIs is, of course, permitted but there are restrictions on repatriation of such money/ sale proceeds of non-monetary asset inherited.

Conclusion

Before receiving any funds/ assets in India, the NRI must check both the provisions- FEMA as well as Income Tax to avoid any complication and non-compliance and the money being struck in India, later on



Investment in India by NRI

1

Who is a non-resident Indian (NRI)?

NRI means a **person resident outside India** who is a citizen of India or is a person of Indian origin.

Person of Indian Origin (PIO) means a citizen of any country other than Bangladesh or Pakistan-

1. who at any time held Indian Passport, or
2. who or either of whose parents or any of the grandparents was a citizen of India under Constitution of India or under Indian Citizenship Act, 1955, or
3. who is spouse of an Indian citizen or spouse of person referred to in 1 and 2 above

2

Can NRI open and maintain Bank accounts in India?

Yes, NRIs can open and maintain bank accounts in India, such as Non-Resident External Account (NRE), Non-Resident Rupee Account (NRO) and Foreign Currency Non Resident Account (FCNR).

3

What is NRE account?

Non-Resident External Account (NRE) maintained in INR

You can save here your income earned abroad and the amount is fully

NRE account may be maintained in any form, e.g. savings, current, recurring or fixed deposit account etc. Joint accounts with a resident person is allowed. repatriable to your country and the interest earned is tax free.

Permissible credits- interest accruing on the account, interest on investment, transfer from other NRE/ FCNR(B) accounts, maturity proceeds if investments were made from this account or through inward remittance. Current income like rent, dividend, pension, interest etc. are also permissible credit.

Permissible debits- local disbursements, transfer to other NRE/ FCNR(B), investments in India.

4

What is NRO account?

Non-Resident Ordinary Account (NRO) is generally used by NRI's to save their Indian income. Rent, dividends or pension funds can be saved here. The accounts may be maintained as savings, current, recurring or fixed deposit account.

Permissible credit - Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permitted. Rupee gift/ loan made by a resident to a NRI/PIO relative within the limits prescribed under the Liberalised Remittance Scheme may be credited to the latter's NRO account.

Permissible debits - Local payments, transfers to other NRO accounts or remittance of current income abroad. Apart from these, balances in the NRO account can be remitted up to USD 1 million per year. Funds can be transferred to NRE account within this USD 1 Million facility.

5

What is FCNR account?

Foreign Currency Non-Resident (FCNR) can be maintained only as fixed deposit.

Foreign currencies are stored in these accounts and is helpful in avoiding the currency fluctuations.

6

Where can NRIs invest in India?

- Fixed Deposit bank accounts
- Mutual Funds
- Real Estates
- Direct Equity
- Bonds and non-convertible Debentures
- Government Securities
- Certificate of Deposits
- National Pension Schemes

7

Is there any tax relief available in the country of residence of the NRIs?

NRI investors are often concerned that there would be double tax on their gains on investment in India as well as in their country of residence. In case India has signed the Double Taxation Avoidance Treaty (DTAA) with the respective country, you can claim tax relief in your country of residence, if you have already paid taxes in India

8

What is FATCA requirement?

The Foreign Account Tax Compliance Act (FATCA) is a 2010 United States federal law requiring all non-U.S. foreign financial institutions (FFIs) to search their records for customers with a connection to the U.S., including indications in records of birth or prior residency in the U. S., or the like, and to report the assets and identities of such persons to the U.S. Department of the Treasury.

The compliance requirement in the US and Canada are more stringent as compared to other nations. According to FATCA guidelines, all financial institutions must share the details of financial transactions involving a US person with the US Government.

For the NRIs, staying in the US or Canada, there are some limitations due to strict FATCA rules. These rules mandate all financial institutions in any part of the world to report all transactions by US citizens and taxpayers to the government there.

9

Is NRI permitted to invest in Real Estate?

NRIs can purchase both residential and commercial properties but is not allowed to buy agricultural lands, farm houses or plantations. However, NRI can get ownership of agricultural land through inheritance.

10

How NRI can repatriate outside India the sale

proceeds of immovable property?

In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by NRI, the Authorised Dealer may allow repatriation of the sale proceeds outside India, provided the



following conditions are satisfied, namely:

(i) 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 or the provisions of these Regulations;

(ii) the amount to be repatriated does not exceed:

- the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or
- the amount paid out of funds held in Foreign Currency Non-Resident Account, or
- the foreign currency equivalent (as on the date of payment) of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property; and
- If the payment was made through an NRO account, he can repatriate the full amount subject to the overall limit of \$1 million per year.

(iii) in the case of residential property, the repatriation of sale proceeds is restricted to maximum two such properties.

11

How can NRI set up and invest in Companies/ LLPs?

Investment in a limited Company: NRIs may invest in shares/ Compulsorily Convertible Preference Shares (CCPS)/ Compulsorily Convertible Debentures (CCDs)/ warrants/ partly paid up shares of an Indian company under Foreign Direct Investment (FDI) Scheme, subject to the terms and conditions specified in the Guidelines.

The amount can be transferred from the banking channel from an account of NRI overseas or from NRE account of the NRI in India.

The investment under the FDI guidelines is on repatriable basis and the sale proceeds of the shares can be taken out of India.

The NRI can also invest from their NRO account in India. The investment would be non- repatriable basis.

Investment in LLP: Likewise, NRI can now also invest in the capital contribution of LLP subject to the sectoral guidelines. The investment can be made from an account of the NRI overseas or from the NRE account in India. The investment is repatriable.

12

Can NRI set up Partnership firm and invest in it?

Investment in a Partnership firm: The NRI can become a partner in a Partnership firm and may invest into the partnership firm on non-repatriation basis. The investment can be made from the NRO account of the NRI maintained in India.

13

Can NRI set up and run a Sole Proprietorship firm?

Investment in Sole Proprietorship firm: An NRI can set up a Sole Proprietorship firm and contribute for its expenses. The investment will be on non-repatriable. The investment to be made from the NRO account of the NRI.

14

Are NRIs allowed to invest in Exchange Traded Funds (ETFs)?

Yes, NRIs are allowed to Invest in Exchange Traded Funds (ETFs). NRIs can invest in ETFs both on repatriation as well as non-repatriation basis.

15

Can two separate trading accounts namely (NRE & NRO) be opened by NRI?

Yes, clients can have two separate trading accounts based on NRE & NRO accounts.

16

Is there any ceiling on the Investments under the Portfolio Investment Scheme?

NRIs are allowed to invest in shares of listed Indian companies in recognized Stock Exchanges under the PIS.

1. NRIs can invest through designated ADs, on repatriation

and non-repatriation basis under PIS route up to 5 per cent of the paid- up capital / paid-up value of each series of debentures of listed Indian companies.

2. The aggregate paid-up value of shares / convertible debentures purchased by all NRIs cannot exceed 10 per cent of the paid-up capital of the company / paid-up value of each series of debentures of the company.
3. The aggregate ceiling of 10 per cent can be raised to 24 per cent, if the General Body of the Indian company passes a special resolution to that effect.

17

Can rights/bonus shares be issued to NRI?

FEMA provisions allow Indian companies to issue Rights / Bonus shares to existing non-resident shareholders, subject to adherence to sectoral cap as may be applicable

18

What are the Prohibited area of investment by NRI in India.

Acquisition of agricultural land, farm houses, plantation activities.

19

What Points to kept in mind by NRI when investing in India

- Your investment carries the right of repatriation of the amount invested and amount earned, only until you remain an NRI.

- Residential address in the resident country is a mandatory field. Hence, you must also attach an attested proof along with the application.

- Are you a resident of any of the 90 countries that have signed Common Reporting Standard? CRS is a global reporting system to combat tax evasion.



Acquisition of immovable properties in India by NRI



There are many reasons an NRI may wish to acquire immovable property in India - as investment, a stay home on their visit to India, return and settlement planning in India and so on.

NRI must be aware of some basic facts if he is planning to acquire immovable property in India. Some of the Must to Know facts are discussed below:-

Can all non-residents buy property in India?

Yes, all NRI holding Indian Passport can buy property in India and if you have a foreign passport, you can also buy property in India provided you also hold an OCI card.

What kind of property can NRIs buy?

NRI/ PIO are permitted to acquire immovable property in India other than an agricultural property, farmhouse or plantation. However, the money used for buying property should be received by way of inward remittances or held in a non-resident account. "Foreign nationals who are married to NRIs / PIOs can acquire one immovable property jointly with their spouse.

Non-residents can buy residential as well as commercial real estate. They are not permitted to purchase agricultural land or farmland.

Can NRIs inherit or gift property?

NRI can inherit any immovable property in India. Also, the law permits them to inherit agricultural land and farmhouses, which they are otherwise not entitled to purchase.

There is also no restriction on persons from whom a non-resident can inherit property. NRIs can even inherit a property in India from other NRIs.

Similarly, a non-resident can freely bequeath or gift property located in India to residents, NRI.

NRIs can also receive a property as a gift. If the property is from a close relative as defined in the Income-tax Act, 1961—mother, father, children, brother and so on—then there will be no tax implication. But if it is not from a close relative, it would be taxable in the hands of the receiver based on either the sale price or stamp duty value. Tax will be paid on the higher of the two values.

Non-residents can inherit or gift any property, including agricultural land or farmland.

Can NRIs buy property through companies?

Foreign firms that have an office in India have restrictions on property purchase. A company that has established an office in accordance with FEMA can purchase real estate that is necessary or incidental to carrying on its business.

On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of RBI. But, if a foreign company has established a liaison office, it cannot acquire immovable property in India. In such cases, the liaison offices can only take property on lease for up to five years.

Non-residents cannot buy real estate through companies for a personal purpose.

How NRI can issue Power of Attorney?

NRIs can use a specific PoA if they want to authorize a person to sell on their behalf. But the PoA must be registered in India after the payment of stamp duty.

How much can NRIs remit?

NRIs can remit either the rental income or the sale proceeds from a property to the country of residence. A non-resident can remit income like rent from a non-resident ordinary (NRO) or from a non-resident external (NRE) account in India. If the tenant is directly remitting rent to the non-resident, it would be subjected to the limits prescribed under the Liberalised Remittance Scheme (LRS), which is a maximum of \$250,000 every financial year.

There's a \$1 million cap on repatriating sale proceeds of a property, rent and other income.

Can NRIs get disputes resolved via RERA?

NRIs can seek relief from various Indian courts if there is any dispute just like any resident Indian property owner. Civil disputes about the title of a property owned by an NRI can be adjudicated by Indian courts. NRIs can even approach real estate regulatory authorities or consumer fora of any state.

They can approach any regulator or court to seek relief just like an Indian resident.

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NRI

returning to India

Taxes you need to know when returning home



Lately in India, we are witnessing an increased influx of Indian citizens who have settled abroad returning to India for various reasons.

There are a lot of queries in the minds of the Indian citizens who have settled abroad and now returning to India like, how will my income be taxed? Can I continue holding NRE (Non-Resident External account) deposit, foreign investments etc? All these queries can be answered by ascertaining if you qualify as a Non-resident Indian (NRI) or an Indian Resident. Definition of Non Resident as per the IT Act and FEMA is different.

If a person is resident, his global income is taxable in India. If a person is a non-resident, only income earned in India will be taxable. Provisions in the IT Act will decide how such income is taxed.

Residential status under FEMA will determine if you must make your investments as a resident or as an NRI. Your residential status under the IT Act will determine if your investments get taxed as a resident or as an NRI.

General tax-related queries of a returning Indian:

1. What to do with NRO, NRE and FCNR accounts?

FCNR is a fixed deposits account for depositing overseas income. The account is held in foreign currency and hence protected against forex rates rate risk. Interest on FCNR deposits will remain tax free. An NRI may open an FCNR with two or more NRI joint holders.

Treatment of such accounts on returning to India can be seen in the table below:

Kind of Account	Treatment to be given on returning to India
NRO (Non-Resident Ordinary) account	Can be re-designated to Resident account.
FCNR (Foreign Currency Non-Resident) account	Hold up to maturity and upon maturity convert the account into rupee account or Resident Foreign Currency (RFC) account .
NRE (Non-Resident External) Account	Can be re-designated to resident account or transfer balance to RFC account.

2. What to do with shares, securities and mutual funds purchased as an NRI?

Returning NRI is required to inform all the companies, funds etc. as to change of residential status from NRI to Resident. Returning NRI must also approach the asset management company or the bank to inform them about this change to facilitate determining of the tax deduction liabilities in case of redemption or payouts.

NRI'

returning to India:

Taxes you need to know when returning home



3. Will an NRE account/ fixed-deposit interest remain tax-free after returning to India?

A recurring question amongst the returning Indians and to answer it, the interest amount on NRE accounts/ deposits (re-designated as resident rupee account/deposit) becomes taxable on your return. If you choose to transfer the balance to RFC account, interest earned on such deposits may be taxable or exempt as per RFC rules. As per Income Tax Act, interest on NRE deposits is tax exempt for as long as you qualify as an NRI as per FEMA. Some investors want to hold on to their NRE deposits thinking they are always tax exempted but this is only a misconception among them. As per the regulations under FEMA you become a resident from the very first day of your permanent return to India you cannot hold on to NRE deposits since it become taxable when you become a resident.

The interest on FCNR deposit will remain non-taxable if the returning NRI retains his RNOR (Resident but not Ordinarily Resident). As and when you become ROR (Resident and Ordinarily Resident), even interest on FCNR deposit becomes taxable.

4. How is overseas investment and incomes generated from such investments post return treated in India?

All overseas assets and investments such as properties, bank deposits, stocks and securities, life insurance policies, loans, company deposits, debentures, bonds etc. held by an NRI can be held and continued to be held by him even after his permanent return to India. Interest on such investments shall be tax free so long as he retains his Non-Resident or Resident and Non Ordinary Resident (RNOR). On becoming Resident and Ordinary

Resident (ROR) his global income shall become taxable and income generated from such investments shall become taxable. Further such investments and assets need to be reported in the ITR of the NRI.

5. How is pension received from a foreign employer treated after return to India?

NRIs receiving pensions from former employers post return to India may be liable for tax on that pension in India. Such tax is subject to provisions of any double taxation avoidance agreement between India and the country from which the pension is received.

6. How does RNOR status helps in tax planning for returning Indians?

Attaining and maintaining RNOR status in terms of tax planning for returning Indians- RNOR are treated as NRI's when it comes to taxation barring a few exceptions. Overseas income earned by him is not taxable as long as he retains his RNOR status. Interests in FCNR deposits and RFC



account shall remain tax exempt so long as he remains RNOR.

For tax planning purposes, a returning Indian can plan his return in such a manner that he retains his RNOR status as long as possible.

7. What is RFC account and how can it help returning Indians?

An RFC account is an account maintained by a resident in foreign currency. This account can be used by returning Indians Persons who have been NRI for a continuous period of not less than 1 year and have become persons resident in India (as per FEMA) on or after April 18, 1992 can open RFC account. RFC account is denominated in freely convertible foreign currency. RFC account can be held in savings, current and term deposits account.



Benefits of Resident Foreign Currency (RFC) Account

- RFC funds can be freely utilized for any genuine remittance outside India through normal banking channels.
- Balance in RFC account is fully repatriable. Principal as well as interest are fully repatriable.
- Principal as well as interest is payable in foreign currency. Hence this involves no exchange risk.
- Interest rates on RFC accounts or deposits are deregulated (reduction/elimination of regulation) and will vary across various banks.
- RFC accounts/deposits are typically available in freely convertible currencies such as

USD, GBP, Euro, AUD and CAD. Most banks may not offer RFC accounts in all such currencies.

- RFC funds can be freely remitted abroad or credited to fresh NRE/ FCNR account if you regain non-resident status.

8. What are some of the DOs and DONT's for returning Indians?

Some common do's and don'ts for returning Indians are as under

DO's:

- Prepare list of assets, investments and liabilities abroad before moving back to India.
- Proper tax planning is a must. Try to maximize the benefits of RNOR status by selecting a permanent return date which can extend the RNOR benefits by seeking professional opinion.
- Always endeavor to comply with the requirements of the law.

DONT's:

- Do not hide any investment or income outside India after returning to India.
- Do not miss out any important document which shall be taken into consideration by IT department at the time of assessment.



Points to consider before becoming NRI

If you are planning to be out of India and become NRI, you must consider some important financials points and tie them up before becoming an NRI.

1. Saving bank account in India to be converted into NRO

This is a requirement stated by the RBI. On becoming NRI, you should convert your savings account into NRO bank account. NRO account is a savings bank account in Rupee currency where you can deposit all your earnings in India viz. rent, interest, dividends etc as well as funds from abroad. The debits allowed are for all local payments, EMIs, Insurance premium, investments etc

You can transfer savings/income deposited from this account to a bank account outside India.

In case any property or investment is sold by you, the sale proceeds can be deposited in the NRO account and you can repatriate upto USD 1 million per calendar year. However, you would need to produce a certificate from your Chartered Accountant declaring that all taxes on the funds have been paid.

You will also earn interest on the amount in your NRO account at a rate similar to the interest on a regular savings bank account. The interest will be taxable and tax will be deducted at source at the applicable rate.

For converting the account into NRO account, you need to visit your bank branch and fill-up the required forms and submit documents namely, two photographs, a copy of your passport and copy of your visa. However, if you have not done this and already moved abroad, you can get copies of all your documents attested from the Indian Embassy / Notary and send them to the bank branch in India with a request to convert your savings account into NRO account.

2. Opening of an NRE account

NRE account can be opened as savings account, current account or

fixed deposit. Funds from abroad can be deposited in NRE account, however, the local earnings such as rent, interest, dividends cannot be deposited into this account. The funds here can be used for making local rupee payments and investment. The sale consideration received in here can be repatriated easily.

You can repatriate any amount of any kind from the NRE accounts. There is no restriction, ceiling or Chartered Accountant certificate needed. No question would be asked from you while repatriating the money.

On NRE savings account as well as on fixed deposit account, you can earn an interest at applicable rates. Interest on NRE account, is tax free.

3. Close your existing de-mat account, open an NRO de-mat account and a new demat under PIS

An NRI has certain restrictions on investment in Indian equities, such as he cannot invest more than 5% in the paid-up capital of an Indian company.

NRI cannot continue to operate regular de-mat account. The existing demat account having existing shares will have to be closed and shares to be transferred to an NRO demat account.

The shares can be continued to be held or can be sold. If the shares are sold, the sale proceeds are to be credited to the NRO savings account and you can repatriate the amount subject to limit of USD 1 million per calendar year (including all other capital account remittances).

If you want to buy shares as an NRI, you would need to open a de-mat account under the Portfolio Investment Scheme (PIS). Here, you can purchase shares with funds in your NRE account and sale proceeds can be credited to NRE account and can be repatriated without any limit or requirements.

If you choose to buy the shares on non-repatriable basis, then, the proceeds will be credited to the NRO account.

4. Give power of attorney to someone in India

For ease of operation, you are suggested to give a power of attorney to someone you trust in India to manage your bank accounts and other financial transactions.

A power of attorney can be given to manage almost all the financial matters including operating bank accounts, buying and selling real estate, renting out property, signing your tax forms, issuing cheques from your account etc.

However, you cannot give a POA to open bank accounts on your behalf.

Power of attorney is to be given to someone on whom you have complete trust. There are two types of power of attorneys: a general POA and a specific POA. A generally power of attorney gives general rights to the holder to conduct a wide variety of transactions on your behalf, such as banking transactions, real estate transactions, shares, mutual funds etc.

The specific power of attorney assigns a specific scope such as power to rent property, power to issue cheques on your behalf etc., thus implying greater safety. Submit attested copies to the concerned service providers such as mutual fund house or bank.

5. Inform service providers

You should inform your status to your service provider for Mutual Information, Insurance policies etc. As per KYC Norms (Know Your Client) you need to inform your residential status.



Tips to make property purchase easier for NRIs

How to make property purchase easier for NRIs

NRIs are permitted to buy and sell property in India. The acquisition and transfer of property by NRIs should be in accordance with the FEMA.

The property should be purchased through a registered conveyance deed. It may also be purchased on a power of attorney. In the latter case, an agreement to sell and a power of attorney are executed by the seller in favour of the buyer.

The RBI has granted general permission to foreign citizens of Indian origin, whether resident in India or abroad, to purchase property in India for their bona fide residential purposes.

The payment has to be made either out of inward remittances in foreign exchange through normal banking channels or out of funds in a NRE or FCNR account maintained with a bank in India.

Foreign citizens of Indian origin, purchasing residential property in India under the general permission are required to file a declaration with the central office of the RBI at Mumbai within 90 days from the date of purchase of the property or final payment of amount. This has to include a certified copy of the document evidencing the transaction and bank certificate regarding the amount paid.

The RBI has granted general permission for sale of such property without its permission. However, where the property is purchased by another foreign citizen of Indian origin, the funds towards the purchase should either be remitted to India or paid out of the balance in a NRE or FCNR account.

The remittance of the sale proceeds depends on the mode of acquisition - whether it was acquired out of funds remitted from outside or out of rupee funds. A property can be acquired out of rupee funds by a NRI before leaving India, or after leaving India, but from

a savings bank account in an Indian bank out of income earned in India.

The proceeds can be repatriated provided the amount does not exceed the amount paid to acquire the property in foreign exchange received from overseas, the amount paid from a FCNR account, or the foreign currency equivalent of the amount paid from funds held in a NRE account.

On residential properties purchased, the RBI considers applications for repatriation of sale proceeds up to the consideration amount remitted in foreign exchange for the acquisition of two properties. The balance amount of sale proceeds, if any, will have to be credited to an ordinary non-resident rupee account of the owner of the property. Applications for the repatriation of sale proceeds are considered provided the sale takes place after three years from the date of final purchase deed or from the date of payment of final instalment of consideration amount, whichever is later.

There is a general permission from RBI to foreign citizens of Indian origin to acquire or dispose of properties — up to two houses — by way of gift from or to a relative who may be an Indian citizen or a Person of Indian origin whether resident in India or not, subject to compliance with applicable tax laws.

Also, it permits non-resident persons (foreign citizens) of Indian origin to transfer by way of gift property held by them in India to relatives and charitable organisations subject to the condition that the provisions of all other laws, including the Foreign Contribution (Regulation) Act, are complied with.

The RBI has granted general permission to certain financial institutions providing housing finance to grant housing loans to non-resident Indian nationals for acquisition of a house for self-occupation subject to certain conditions. The purpose of the loan, margin money and the quantum of loan will be on par with

those applicable to housing loans to residents.

Repayment of loan should be made within a period not exceeding 15 years out of inward remittances or out of funds held in the investors' NRE, FCNR or NRO account.

Where property is purchased by a foreign citizen of Indian origin, the funds towards the purchase should be remitted to India or paid out of the balance in a NRE or FCNR account.

Applications for the repatriation of sale proceeds are considered if the sale takes place after three years from the date of final purchase deed or from the date of payment of final instalment of consideration amount, whichever is later.

A Guide for NRI's selling their property in India

Introduction:

There is a fair amount of uncertainty that surrounds the tax implications an NRI might have when he sells his property in India. You may have purchased such property in India or you may have inherited such property. But, regardless of either scenarios selling any kind of property that is situated in India attracts the liability to pay tax in India. Such tax liability is called 'Capital gains'

What is Capital Gain?

Capital gains refer to the profit an assessee makes when he sells a capital asset. Any such profit made by the assessee made in the previous year becomes taxable in the assessment year.

There are two types of capital assets:

- **Short-term capital assets:** An asset held for a period of less than 36 months is called a short-term capital asset, except for immovable property such as land, building. Immovable property such as land, building held for a period of less than 24 months shall be short term capital asset. All gains arising from sale of such short-term capital assets shall be termed as short term capital gains.
- **Long-Term capital asset:** An asset held for a period of more than 36/24 months is called a long-term capital asset. All gains arising from sale of such long-term capital assets shall be termed as long-term capital gains.

How is capital gain calculated?

Depending on the type of capital asset the capital gains are calculated accordingly. Separate procedures have been specified for calculating short-term and long-term capital gain, which have been specified here under:

Short-Term capital gain (loss):

Full value of sale consideration	***
Less: Expenditure incurred in such sale (brokerage, cost of stamp papers etc.)	(***)
Cost of acquisition	(***)
Cost of Improvement	(***)
Short-Term capital gain (loss)	***

Long-Term capital gain (loss):

Full value of sale consideration	***
Less: Expenditure incurred in such sale (brokerage, cost of stamp papers etc.)	(***)
Indexed* Cost of acquisition	(***)
Indexed* Cost of Improvement	(***)
Long-Term capital gain (loss)	***

*Note: Cost of inflation index is used to provide for inflation.

Repatriation of proceeds from sale of property in India by an NRI:

Under the exchange control law, NRIs are allowed to remit up to \$1 million from the sale proceeds of a property in India from their non-resident ordinary account on production of documentary evidence of acquisition along with a certificate from a Chartered Accountant in the prescribed format. Remittance exceeding \$1 million requires special permission from the Reserve Bank of India. Under India tax law, the remitter is required to furnish prescribed information electronically in Form 15CA (self-declaration) based on a certificate obtained from a CA in Form 15CB, wherever applicable.



FAQ's on Tax implications on Sale of Property in India

Is house property a capital asset?

A house property is considered a capital asset. Hence any profits arising from sale of house property are considered a capital gain (long term or short term as the case may be).

Will transfer of house property, land etc. which is part of the assessee's stock-in trade, give rise to capital gain?

No, transfer of house property, land etc. which is part of the assessee's stock-in trade will not give rise to capital gains. Example: In case of an individual who is engaged in the business of real estate, any sale of house property by such person shall not attract provisions relating to capital gains under Income Tax Act.

Will a person acquiring a house property as a part of testament (will) be considered a capital asset

under the provisions of Income Tax Act?

Any house property inherited by an individual through wills, succession or gift is also considered as a capital asset under the provisions of Income Tax Act. However such transfer shall not be considered a capital gain since there is no sale consideration involved in the transaction.

However if the person acquiring the property decides to transfer it for consideration then it shall be considered a capital transfer and such transaction will attract capital gain tax under the provisions of Income Tax Act.

Is agricultural land property a capital asset?

For land to be classified as agricultural land, the following two conditions have to be fulfilled:-

- Such land should have been put to agricultural use before transfer takes place, and

- The land should be outside the jurisdiction of a municipal corporation having such population as may be specified under the Act.

Under the Income Tax Act agricultural land is classified into two categories:-

- Urban agricultural land, and
- Rural agricultural land

Rural agricultural land is not considered a capital asset under Income Tax Act. Any transfer relating to rural agricultural land does not give rise to capital gain. Thus, only urban agricultural land is taxable under the Income Tax Act.

As an NRI can I claim an exemption from capital gain tax when sell my house or land that is situated in India?

There are certain exemptions that you can claim which are discussed hereunder:

• Under Section 54: Profit on sale of property used for residence

An individual or HUF who has sold residential property and purchased another residential property can avail the benefit of exemption under this section provided all the following conditions are satisfied:

1. Capital asset transferred should be a residential house property.
2. The capital asset transferred should be a 'Long term capital asset'.
3. The seller should:
 - I. Purchased one residential house in India within a period of one year before or two years after the date such transfer takes place.
 - II. Constructed one residential house in India within a period of three years from the date of transfer.

• Under Section 54-B: Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases

Certain conditions have to be satisfied for you to be able to claim exemption under this section, which are:

1. The benefit of section 54B is available only to an individual or a HUF
2. The asset that is transferred should be agricultural land and such land may be long term or short term capital asset.
3. The agricultural land should be used by the assessee or his parent for at least 2 years immediately preceding the date of transfer.
4. Within a period of two years from the date of transfer of agricultural land, he should acquire another agricultural land.

• Under Section 54-F: Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house

1. The assessee already owns more than one residential house on the date of transfer of the long term capital assets.
2. The assessee purchases additional residential house (other than the new residential house purchased/ constructed to claim an exemption under section 54F is claimed) within a period of one year from the date of transfer of the long term capital asset.
3. The assessee constructs additional residential house (other than the new residential house purchased/ constructed to claim an exemption under section 54F is claimed) within a period of three years from the date of transfer of the long term capital asset.

Who is a Non-Resident Indian?

Introduction:

There is lot of confusion that is prevalent among people mainly NRI's returning to India as to who exactly is a Non-Resident? A Non-Resident has been defined under the Income Tax Act and Foreign Exchange Management Act. Interestingly both the definitions are slightly different from each other. In this we shall seek to demystify all the doubts and confusions that anyone might have with regard who exactly is a Non-Resident from a law point of view.

'Non-Resident Indian' as per Income Tax Act:

There are three residential statuses:

- **Resident and Ordinarily Resident (ROR)**
- **Resident and Not Ordinarily Resident (RNOR)**
- **Non-Resident**

You are a resident if you satisfy any of the following conditions:

1. You are in India for 182 days in the previous year, or,
2. You are in India for 365 days in four preceding financial years and 60 days in the year.

Exceptions:

1. If you are leaving India for employment or as a member of crew of Indian merchant ship the '60 days' in the second condition is replaced by '182 days'.
2. For Indian citizens or Persons of Indian Origin (PIO) who stay abroad but are on a visit to India, the '60 days' in the second condition is replaced by '182 days'.

Note: A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.

The Finance Act 2020 has amended the above conditions as follows:

- In case of the citizen or PIO having total income except income from foreign sources, exceeding Rs. 15 lakhs during the previous year, the "60 days" in the second condition shall be substituted by "120 days".
- An Indian citizen or PIO having total income, other than income from foreign sources, exceeding Rs. 15 lakhs would qualify as RNOR in India if he/she is present in India for 120 days or more but less than 182 days during the relevant financial year.
- An Indian citizen would be deemed to be RNOR if such an individual is not liable to pay tax in any other country or territory by reason of residence or domicile in that country and his total income, other than income from foreign

sources, exceeds Rs. 15 lakhs in the relevant financial year.

Who is RNOR?

You are an RNOR if you satisfy any of the following conditions:

1. You have been an NRI in nine out of ten years preceding the financial year under consideration. (OR)
2. You have been in India for up to 729 days during the seven previous years, preceding the financial year under consideration. (OR)
3. If you are an Indian Citizen AND are not a tax-resident in any other country AND your Indian Income exceeds Rs. 15 lakhs. (OR)
4. You are an Indian Citizen or PIO AND your Indian Income exceeds Rs. 15 lakhs in the previous year AND your period of stay in India in the previous year ranges from 120 to 182 days.

Conditions (3), (4) for RNOR status have been added by Finance Act, 2020 and will be applicable from the financial year 2021.

Definition of "Person resident in India" as per FEMA:

FEMA uses the term 'Resident outside India', for Non-Residents. FEMA has two classifications for residential status – 'Resident in India' and 'Resident outside India'.

When are you an 'Indian Resident' as per FEMA?

You are a Resident in India if you have been in India for a period exceeding 182 days during the preceding financial year.

You may be considered Resident outside India even if you have been in India for a period of exceeding 182 days, if:

1. You have gone out of India (or stay outside India) for employment.

2. You have gone abroad (or stay abroad) for business.
3. You have gone abroad (or stay abroad) for an uncertain period.

When are you a NRI as per FEMA?

You are a Resident outside India (NRI) if you are in India for 182 days or less during the preceding financial year.

You may be considered Resident in India even if you have stayed in India for less than 182 days during the preceding financial year, if:

1. You come to (or stay in) India for employment.
2. You come to (or stay in) India for business.
3. You come to (or stay in) India for an uncertain period.

Differences between a Non-Resident under FEMA and IT Act

- For you to be resident in India, IT Act requires stay of 182 days in India while FEMA requires a stay exceeding 182 days.
- IT Act considers current financial year for determination of residential status while FEMA considers preceding financial year.
- FEMA considers the reason of stay in India or visit abroad for determination of residential status. IT Act considers number of days of stay in India.
- Under Income Tax Act, you cannot be resident for part of the year and non-resident for rest of the year. Under FEMA you could be a resident for part of the year and non-resident for rest of the year or vice-versa.

Illustration 1:

Let's say, you leave India for employment on 15/11/ 2019.

Under Income Tax Act: Since you are in India for more than 182 days, you will be considered 'Resident' in financial year 2020.

Under FEMA: You will be Resident until 14/11/2019 and non-resident for the remainder of the financial year.

Illustration 2:

Let's say, you leave India on 15/11/2018 to visit your brother in the US. You return to India on 20/08/2020.

Under Income Tax Act:

- Assessment year 2019: You are 'Resident' since you have stayed in India for more than 182 days during Assessment year 2019.
- Assessment year 2020: You are NRI as you have been outside India for the entire year.
- Assessment year 2021: Resident since your stay in India will be more than 182 days.

Under FEMA:

- **Financial year 2019:** You are 'Resident' since you were in India for 365 days during financial year 2018 (preceding financial year)
- **Financial year 2020:** You are 'Resident' since you were in India for more than 182 days during financial year 2019 (preceding financial year)
- **Financial year 2021:** You are 'Resident' since you have returned to India permanently (even though your stay abroad was more than 182 days during financial year 2020)

Hence from the above discussion we can infer that if a person is resident, his global becomes taxable in India. On the other hand, if a person is a non-resident, only income earned in India will be taxable in India. Provisions in the Income Tax Act will decide how such income is taxed.

Residential status under FEMA will determine if you must make your investments as a resident or as an NRI. Your residential status under the Income Tax Act will determine if your investments get taxed as a resident or as a Non-Resident.

How NRI can maximize investment benefits?

As an NRI, in order for you to stay one step ahead of the financial curve, you can invest your money in the Indian financial market where you invest to maximize your returns at a given level of risk. It can be said that risk and returns are intertwined. Thus, it is natural for you to look for investment avenues that can maximize their return with minimum perceived risk.

Return on investment (ROI) helps us evaluate the efficiency of an investment. It can also be used for comparing different investment options. A positive ROI indicates that the investment may be profitable while an investment with a negative ROI should be avoided. Returns should be calculated in light of rates of inflation that is prevalent in the economy.

A common fear among investors is, facing bouts setbacks in their investing journey where their investment loses value in the short run. This might force investors to make hasty investment decisions. Also higher returns might make investor greedy where they tend to hold onto higher yielding investments.

Depending on the type of investment there are some ways to maximize your

returns. Lets us explore some tried and tested tips to maximize your return and possibly avoid costly investment related mistakes.

Understand the 'WHY' you are making a certain investment

Generally, most NRIs returning to India, have surplus funds in the form of savings and they are constantly searching for investment avenues to allocate those savings. You should ask yourself, what are my goals of investing? Am I looking to make short term investments with a larger return and a higher risk, or am I looking for long term investments with a constant rate of return and a lower risk factor.

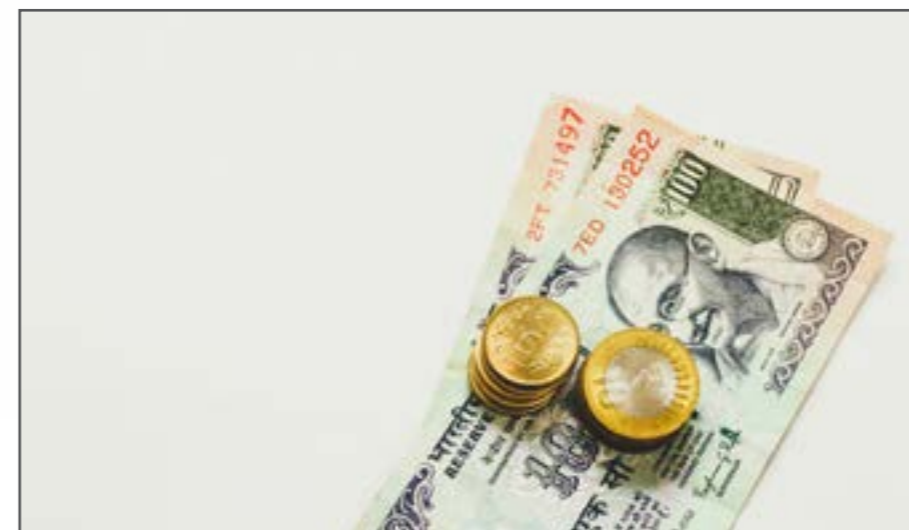
For many NRIs investing in India, is part of their retirement portfolio. Also retirement could be a few decades away. Even if retirement happen before that it is unlikely that you will end using your entire investment portfolio in the initial years of your retirement. If you avoid taking short-term decisions then this might be prudent on the portfolio that is driven by market volatility.

Focus on the growth potential of an investment portfolio

Generally speaking, performance of an Equity instrument is directly related to the corporate earnings. Rather than looking at the past performance of a portfolio, one should look evaluate its growth potential. One should give due consideration to the growth potential of an investment portfolio.

Consider the 'Unpredictability Factor' associated with the Financial Market

As investors, we would like to see the market value of our investments increase in a linear fashion. This linear progression is not practically feasible if you are investing in the equity market. The equity market goes through bouts of significant returns followed by periods of low/no/negative return. It is practically impossible to figure out when these returns will increase and when it will come down.



Implement 'Asset Allocation' in your investment strategy

There is a general tendency among the investors to implement asset allocation in a reverse manner where money is allocated to higher returning asset class and money constantly moves from lower returning asset class to higher returning asset class. The asset allocation principle actually works in the opposite manner. Which

means you should sell higher returning asset class and purchase lower returning asset class thus rebalancing the portfolio so that the mix remains constant. This strategy may be difficult to implement but it will serve investors well. Asset allocation is thus very important to create and balance a portfolio.

Do not abandon your investment strategy mid-way

Sometimes when investors see that their investments are yielding lower or negative return, it is very common to see investors switch their regular investing strategy through Systematic Investment Plan (SIP) or Systematic Transfer Plans (STP). This might prove detrimental to the investor's portfolio in the long run. We can take advantage of falling financial markets through a regular investing strategy. Instead of making such decisions we should stick with our investment strategy.

Bottom-line:

As an investor you should review your goals periodically. As we go through ups and downs in life our investment goals might also change. Even if nothing has changed it is a prudent practice to review your goals periodically and to make any changes if and when it is required.

Things to do on your India visit: checklist for NRI's

Most NRI's visit India at least once every year. While they might be eager to come visit India and meet their families and catch up on everything they might have missed out on, they should also consider financial aspects of their house keeping during their visit to India. This will help them get back to their work after this well-deserved break.

If you are an NRI this will be the perfect opportunity for you reflect on financial goals which includes retirement goals, savings plan, education for your children etc..

Some aspects they need to consider when they are visiting India include the following.

Independent medical insurance cover

Most NRIs visiting India have insurance cover in their country of residence. However, such insurance won't be valid in India if the need

arises. Also buying health insurance for you and your families may not that easy if there are pre-existing medical conditions in your family. You might save some money by deferring the purchase of an insurance cover but should God forbid, if you run into an emergency you risk getting into a huge financial debt. Try and evaluate all the medical insurance options that are available to while you are visiting India since it might not be possible once you get back to your life in your country of residence.

Consolidate and update all your bank accounts

You or your family members probably may have multiple resident bank accounts even if you and your family members have been non-residents since many years. Consolidate and update all such accounts and make them easier to manage. It is advisable to have one NRO account for all India generated incomes and one NRE

account for all foreign incomes one may wish to repatriate to India.

Consolidate your Investments

You may have made certain investments in India while you were a resident. Consolidate, manage and update all such investments like de-mat accounts that should be converted into non-resident status. This will also help you evaluate the current state of your investment. This might also be an opportunity for you to re-structure your investments.

KYC status

Consider updating your KYC as a non-resident. This will help you update your bank accounts and investments as a non-resident since KYC will be required for this purpose. Ensure that mobile numbers, PAN and email ids are updated correctly across all investments and bank accounts. It is also advisable to link one of your trusted family members phone

number with all investments and bank accounts to facilitate receiving OTP's if the need arises.

Update PPF account

NRI's are not permitted to have PPF accounts beyond their original term of fifteen years, it is advisable to close all such accounts when their original term is completed. Do not extend them during your India visit.

File your ITR

It is important that you file all your income tax returns correctly with an NRI status. Remember to collect refund of TDS that you may have paid in excess. It is advisable to consult a professional, a Chartered Account (CA) who can guide you through the refund procedures.

These are some of the things that you should do when you are visiting India to ensure a tension free stay now and, in the future, when you return to India.

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The trend of NRI

investing in indian real estate
during covid time

Introduction:

The COVID-19 pandemic has led to plethora problems like global economies taking a nose dive, people being laid off from companies etc. These problems have also affected NRI's world over. Many Indians are returning to India at an unprecedented rate since the COVID-19 pandemic. Naturally, when an NRI is moving back to India, them and their families would require a place to stay. We are therefore seeing an increased number of NRI's making an investment in the real estate sector.

Projections indicate that NRI investments in Indian real estate are set to go up to \$13.1 billion in financial year 2021.

We also seeing a lot of NRI's buying real estate for purely investment purpose. Through this option they can expect regular inflow of rental income if they choose to let-out their property. Through this article let us try and understand why we are seeing this upswing trend of NRI investors in the Indian real estate market.

Pandemic a boon for NRI investors in the real estate market:

There a lot of factors that the NRI investors consider conducive for making an investment in the Indian real estate market. Some of them are:

Highly volatile stock market:

Since the pandemic hit, the stock market has been highly volatile. The International Monetary Fund (IMF) has stated that the world has entered recession that is as bad if not worse than the global financial crisis that happened back in 2008. Since COVID-19, the market has been bullish and bearish hence being unpredictable. This has dissuaded NRI's from investing in the stock market lately because of the high risk factor involved with such an investment.

Falling bank deposit rates:

Both the bank deposits and lending rates have fallen drastically since the pandemic hit. The deposit rates have fallen faster than the borrowing rates. This difference is not as vast when it comes to public sector banks. This falling rate of interest on fixed deposits has made this investment option unattractive for NRI investors.

Lower returns on other investment:

Other investment options such as gold and other fixed assets have also taken a nose dive since the pandemic.

Diminishing value of Indian Rupee:

The value of Indian Rupee has consistently been falling against the dollar since the pandemic. This means the NRI's have more purchasing power to buy bigger and better properties with their money.



Basic things to keep in mind for NRI's looking to invest in real estate

- Documents required for owning property in India are PIO or OCI cards, PAN, Power of Attorney (Optional)
- Who is your developer?

Since the enactment of Real Estate (Regulation and Development) Act, 2016 real estate investing has become a lot safer in India. However, you should stick to trusted names in real estate. Also, have a look at the track record of developers before making the commitment to buy.

C. Who is your attorney?

If you are appointing an attorney in India be mindful of whom you place your trust in. Beware of the fact that he could misuse the authority landing you in serious trouble with the laws.

D. Who is your tenant?

If you choose to let out your property, a personal meeting with your tenant is always desirable since you are basically handing over you property to him. It is also a prudent practice to do a background check on the tenant. By doing this you are making sure that your premises will not be utilized for any unauthorized purposes.

E. Tax on sale

In future, if you decide to sell the property then any profit you may have earned from the sale transaction becomes taxable as capital gain. For real estate property minimum period for long term capital gain (loss) is two years. Otherwise it shall be short-term capital gain (STCG).

Conclusion:

For NRI's looking to make an investment in India this is the perfect time. The real estate prices are at an all time low because the pandemic. You should keep in mind that the real estate market is not always going to be like this. It will bounce back and when it does, your investment will appreciate.

As an NRI should you be worried about tax on remittances?

A five percent tax on outward remittances was included in the Finance Bill, which was introduced into the Lok Sabha by the Finance Ministry, on 1st February, 2020 which was going to be effective from 1st April 2020 this year. But due to the COVID-19 pandemic, the levy of the tax was postponed to the 1st October 2020. This means that people making foreign remittances need to be keep Tax Collectible at Source (TCS)* liability in mind before sending any money abroad. This essentially affects NRI's receiving any money from India.

This five percent tax is levied only on overseas remittances but not on remittances received in India from abroad. A lot uncertainty and misinformation surround this new levy of tax. Let us try and breakdown some of the major aspects of this tax.

*Note: Tax collected at source (TCS) is a tax the seller collects from any buyer at the time of sale. It also applies to remittance market where currencies are bought and sold.

Liberalized Remittance Scheme (LRS)

The Scheme was introduced in India on the 4th of February 2004. The LRS is a liberalized scheme under Foreign Exchange Management Act 1999, which allows resident individuals including minors remit funds overseas for permitted current or capital account transactions or a combination of both, within the overall ceiling limit of US \$ 250,000/- in a financial year.

SOME FAQ'S REGARDING THIS NEW LEVY

Q When is this tax at the rate of 5% levied?

From 1st October 2020, a tax will be collected at source from individuals making any foreign remittances through the Liberalized Remittance Scheme (LRS) and on purchasing a foreign travel package. TCS will be leviable on such transactions/payments if they are above the limits specified under Income-tax Act, 1961. STT is required to be paid even at the time of acquisition (subject to notified exemptions).

Q Can individuals claim credit for such TCS?

Individuals can claim credit for the TCS at the time of filing income tax return in the manner similar to tax deducted at source.

Q How is this applicable to foreign tour package?

The foreign tour package includes business, family or religious tours etc. Such tour packages generally cover all expenses which includes travel, lodging, boarding, etc.

A seller of overseas tour package who receives any payment from any person who purchases the package shall be liable to collect TCS at the rate of 5% from the buyer. This rate will be 10% instead of 5% if the buyer does not furnish Indian Identification documents (like PAN card or Aadhaar card) to the authorized deal or tour package seller.

Q What is the amount up to which no such tax is payable?

Tax at the rate of 5% (or 10% as the case may be) as the case may be shall be payable only if the total remittances during a financial year exceeds Rs. 7,00,000/-. As soon as this threshold is crossed the tax is leviable on such excess amount for that particular financial year.

Q Is this tax applicable on both residents and non-residents?

This tax is applicable on Indian residents only and not on non-residents. This is good news for NRIs, as this tax of 5% is not applicable on them, but rather only to the resident individuals of India.

Q Can an NRI transfer funds from NRO to NRE Account without payment of this tax?

NRI's can transfer up to US \$1 million in financial year from NRO to NRE Account. No tax is payable on such transfers provided tax was paid on the money that was deposited in the NRO account. Remittances in excess of US \$1 million will require special permission from the Reserve Bank of India. If there is any discrepancy in proving the source of the funds and the bank rejects the transfer request then this can be avoided by getting it verified with a CA certificate. It should be kept in mind that you cannot deposit money from sources in India such as house rent or pensions in this account.

Q Is money remitted to meet educational expenditure taxable?

Earlier remittances made for educational purposes is taxable if the total remittances of the individual exceed Rs. 7,00,000/- at the rate of 5%. However, the government has reduced this rate to 0.5% if the amount remitted is for the purpose of education through a loan obtained from any financial institution if such remittance exceeds Rs. 7,00,000/-.

NRI's

WORRY AS TAXATION CONCERN RISES



Due to the recent COVID-19 pandemic, NRI's settled all over the world who were visiting India were stuck here since travel restrictions were imposed by the governments all over the world. This gives rise to tax implications on their extended stay.

The pandemic has also led to a lot of companies laying-off their employees. Our government has also proactively been working on bringing back NRIs stuck all over the world back home. Also most economies have taken a nosedive since the pandemic hit. This has also forced NRI's to return home. A major concern for them is the taxability of their overseas income. A lot of tax planning is required for a smooth relocation.

Recent amendment in Law relating to residential status:

Section 6 of the Income Tax, 1961 relates to residential status. The said section was recently amended vide Finance Act, 2020 and it will be applicable from the financial year 2021.

Earlier, if an individual satisfies any of the following two conditions he will qualify as a resident of India else will qualify as a NR for that FY:

1. his/her stay exceeds 182 days during the FY or
2. his/her stay exceeds 60 days during a FY and 365 days in preceding 4 FY's.

The following was added to the above condition:

If an Indian citizen or Person of Indian Origin comes for a visit to India, then 60 days mentioned in point b) above will be enhanced to 182 days.

There is an addition to this condition, which states that if an Indian citizen or PIO who comes for a visit to India and his total income from a business or a profession set up in India exceeds 15 lakhs during that FY, then 60 days will be substituted by 120 days.

How this amendment affects NRI's? How is this a cause of concern for them?

As per this amendment, Indian citizens who have income earned in India exceeding Rs. 15 lakhs during any year will also be deemed residents of India if they are not tax resident in any other country by reason of domicile or residence or any other criteria of similar nature.

The Indian Government is amending the residency provisions and making them more stringent in order to bring the wealthy individuals under the tax bracket who manage their stay in India in such a way that they remain a Non-Resident across the globe and evade taxes. The Government will surely be able to increase the tax collection by bringing more individuals under the tax net.

How NRI's are reacting to such changes in residency laws?

NRI's are increasingly getting wary of getting included under the tax net. While many NRI's are seeking second citizenship elsewhere many have already taken that step. The trend suggests that the number will only increase in the coming years. This might also be a cause of concern for our government since their taxpayers will reduce thus reducing their tax total tax revenue.

Clarification given by the government:

As for NRI's stuck in India due to the COVID-19 induced travel restrictions, the union finance minister Mrs. Nirmala Sitharaman has clarified that their extended stay in India would not be counted towards determining their residential status for the financial year 2020-21. This relaxation applies to individuals who had arrived in India before the 22nd of March 2020. This will also be extended to NRI's who were quarantined in India 1st March

2020 due to COVID-19. Hence the time that NRI's have spent in India from the 22nd of March 2020 to the 31st of March 2020 will not be counted for residential status.

Source: CBDT Circular 11/2020, 8 May 2020, "Clarification in respect of residency under Section 6 of the Income Tax Act 1961".

All NRI's returning to India permanently on account of the COVID-19 pandemic must consult a good financial advisor to help guide them through their tax planning.

Tax Free Income for NRI's

Non-residents Indians are granted certain tax exemptions if they are defined as or fulfil the criteria of Non-Resident Indian under the Income Tax Act, 1961.

Some of the tax free incomes available to NRI are-

- Interest earned on Savings Certificate, Interest earned on Non Resident (Non Repatriable) deposit.
- Interest earned on Foreign Currency Non Resident (Bank [FCNR(B)] Deposit.
- Overseas income of NRIs, Dividend income from Indian Public/Private Company.
- Indian Mutual Fund and from Unit Trust of India.
- Long-term capital gains arising on transfer of equity shares traded on recognized Stock Exchange.
- Units of equity schemes of Mutual Fund.
- Remuneration or fee received by non-resident / non-citizen / citizen but not ordinarily resident 'consultants', for rendering technical consultancy in India under approved programme including remuneration of their employees.
- Income of their family members which accrue or arise outside India.
- Interest on notified bonds.



Tax saving NRI's

Various Deductions for NRIs

There are several tax saving options available for Non-Resident Indians. Non-Resident Indians are allowed the following deductions under Income Tax Act, 1961:

- Home Loan Interest Deduction:** Non-residents Indians are eligible to avail deductions on home loan interest for the interest portion of the EMI paid towards the repayment of home loans
- Savings Deduction:** NRIs are not allowed the following investments:
 - Non-residents Indians not allowed to open a PPF account. An existing PPF account can be continued till maturity.
 - Non-residents Indians are also barred from investing in National Saving Certificates (NSC), Senior Citizens Savings Scheme (SCSS) and Post Office Time Deposits (POTD). Existing investments (i.e., those that were purchased before becoming an NRI) can be continued till maturity.
- Health Insurance Premium Deduction:** NRI can claim deduction for premium paid on medi-claim / health insurance policy of self and family.
- Other Deductions:** There are many other deductions available to resident Indians - Health Insurance Premium, Medical treatment of disabled dependent, Medical treatment of certain specified ailments, Deduction for Handicapped person, Educational loan, Deduction for Donations and Rent paid.

options for


If you are a Non Resident Indian (NRI) and have a bank account here in India, then you must be aware of the existing tax rules as far as NRI's are concerned.



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