

ACQUISITION & TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY NRIs

India has always been a country with rich human talent who have conquered various positions globally. Indians have settled across the world and most of them continue to or wish to hold / own property in India. Further many of them invest in Indian commercial / residential properties as a good investment option.

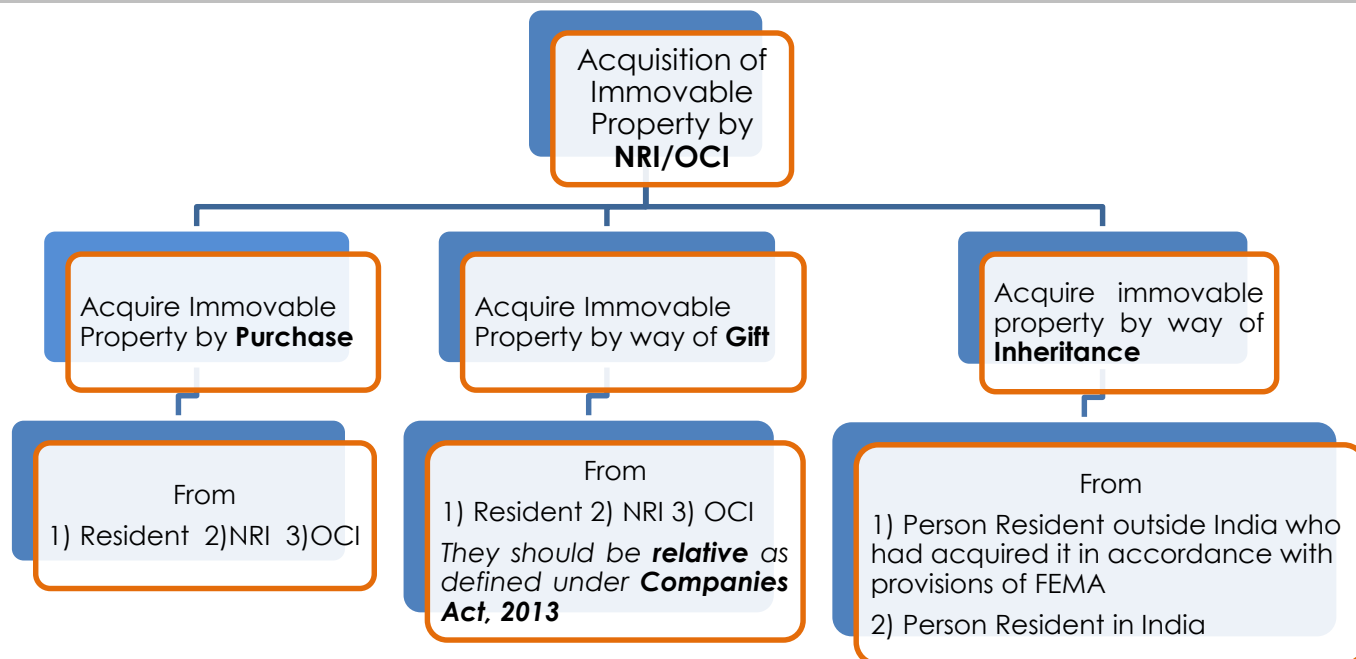
However, owning or transferring a property in India is governed under various regulations in India and failure to comply with those regulations can attract monetary as well as other penal actions. One should be aware of the various provisions pertaining to the purchase or owning of an immovable property in India under the Foreign Exchange Management Act (FEMA) as well as Income Tax Act.

IMPORTANT DEFINITIONS

- **Non- Resident Indian (NRI)**:- NRI is a person resident outside India who is a citizen of India.
- **Overseas Citizen of India (OCI)**:- OCI is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;

ACQUISITION OF IMMOVABLE PROPERTY

Various modes of acquisition of Immovable property can be summarised as follows:-



Note: -

- NRI's and OCI's **cannot purchase or acquire by way of gift any agricultural land/farmhouse and plantation property** in India.
- Specific conditions are given in the FEMA regulations for acquisition of immovable property
 - by foreign embassies/diplomats/consulate generals,
 - by Branch/Office for carrying out permitted activity and
 - by Long-term Visa Holders residing in India who are citizens of Afghanistan / Bangladesh / Pakistan belonging to minority communities in those countries, i.e, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians.
- As per section 6(5) of FEMA, a person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her when he/ she was resident in India or inherited from a person resident in India.

MODE OF PAYMENT

- Out of funds received in India through normal banking channels by way of inward remittance
- Non-Resident Account (NRO / NRE/ FCNR) maintained in accordance with the Act
- No payments can be done by traveller's cheque or by foreign currency notes or any other mode except those specifically mentioned above.

JOINT ACQUISITION OF PROPERTY BY THE SPOUSE OF A NRI OR AN OCI

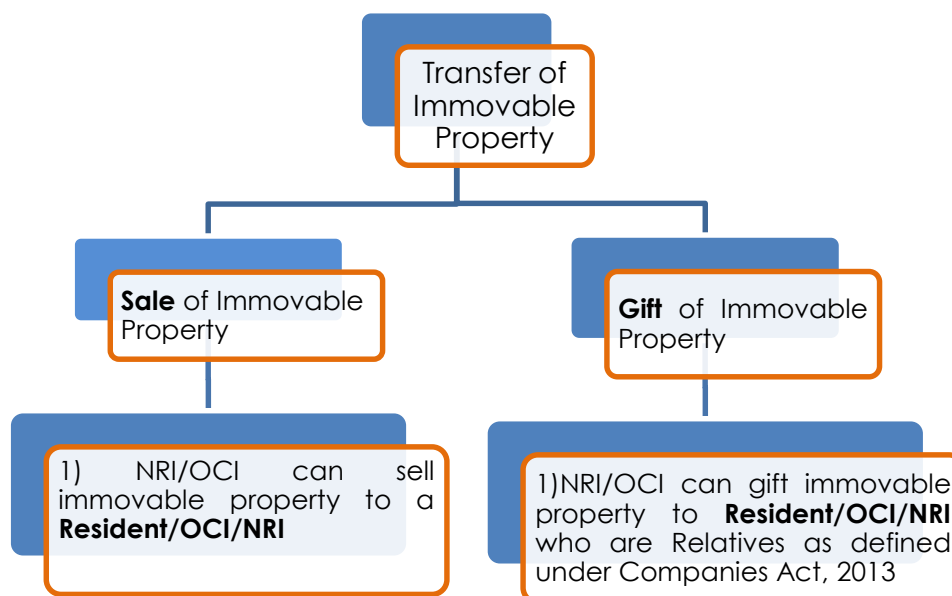
A person resident outside India, not being a NRI or an OCI, who is a spouse of a NRI or an OCI may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse subject to below conditions :-

- The consideration shall be paid as per mode of payment mentioned above.
- Marriage has been registered and subsisted for a **continuous period of atleast 2 years** immediately preceding the acquisition of such property.
- The non-resident spouse is not otherwise prohibited from such acquisition.

PROHIBITION ON ACQUISITION AND TRANSFER BY CITIZENS OF CERTAIN COUNTRIES

- No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India.
- No such prohibition is applicable if the above person is **an OCI**.
- The above persons can take a lease for period not exceeding 5 years.

MODES OF TRANSFER OF IMMOVABLE PROPERTY



Note: - NRIs/OCIs can **transfer/gift any agricultural land/farmhouse and plantation property in India only to Resident of India.**

REPATRIATION OF SALE PROCEEDS OF IMMOVABLE PROPERTIES

PROPERTY ACQUIRED OUT OF REPATRIABLE MODE - INWARD REMITTANCE/ NRE/ FCNR	PROPERTY ACQUIRED BY WAY OF NON-REPATRIABLE MODE - NRO:
<ul style="list-style-type: none"> ➤ In case the property was acquired by way of inward remittance, out of funds held in FCNR / NRE account and in compliance with foreign exchange laws in force, sale proceeds can be freely repatriated outside India without any RBI permission. ➤ However, in case of residential house, repatriation is restricted to maximum for 2 properties. 	<ul style="list-style-type: none"> ➤ The funds cannot be freely repatriated outside India. ➤ However, NRI can repatriate funds lying in his NRO Account on account of sale proceeds upto USD 1 Million per financial year subject to conditions and completion procedural compliance prescribed in the scheme. For remittance exceeding USD 1 Million in a FY, RBI approval is required. ➤ If remittance is in instalments, all instalments should be from a single AD bank.

COMPLIANCE UNDER PROVISIONS OF INDIAN INCOME TAX

A. WHEN NON-RESIDENT (NR) IS SELLER

As per provisions of section 195 of Income Tax Act, any person making payment to a non-resident needs to deduct tax at source as per rates given in force. Accordingly, it is essential to take care of the below points while acquiring property from NR:-

- Any person buying property from another NR needs to deduct & pay tax as per rates in force from the sale consideration.
- In case lower/nil deduction application is filed by NR, deduct & pay tax as per rates given in Order issued by Assessing Officer. NR should make sure that his PAN is lying with International Tax ward while applying for such application. In case jurisdiction of the PAN is not with International Tax Ward, PAN migration needs to be carried out.
- Person deducting lower tax as per the said certificate should ensure :
 - ✓ Online Certificate is obtained from Tax Department having 10 digit certificate number. The said certificate number needs to be quoted in TDS Return to be filed.
 - ✓ Certificate obtained will be applicable only for payments made after date of issuance of certificate. Accordingly, TDS should be deducted at rates prescribed in the Act for the payments made prior to obtaining the certificate.
- Buyer also needs to file TDS Return in Form 27Q disclosing details of taxes deducted at source for which it is mandatory to hold TAN (Tax Deduction Number).
- For remitting sale proceeds outside India or transferring to NRE Account of such NR seller, Form A2, Form 15CA & Form 15CB need to be submitted to the bank along with other supporting documents as may be prescribed by the AD Bank.
- NR needs to file his return of Income in India.

B. WHEN NON-RESIDENT (NR) IS BUYER

- Any person making payment to person resident in India on account of purchase of immovable property, TDS @1% is required to be deducted if sale consideration of the property exceeds Rs. 50 Lakhs.

- If the NR is purchasing property from another NR, then TDS should be deducted at rates as mentioned above in Part A.
- Accordingly, whenever NR purchases immovable property in India, it is essential for him to deduct TDS if applicable while making payment of the said property.
- Tax deducted needs to be paid within 30 days from date of deduction by filing Form 26QB which is Return cum Challan.
- There is no requirement of applying for TAN by the NRI buyer. Form 26QB can be filed based on PAN of NR.

C. CONSEQUENCES OF NON-DEDUCTION / NON-PAYMENT AND NON-FILING OF TDS RETURN

- Interest @ 1% per month or part thereof for non-deduction of TDS
- Interest @ 1.5% per month or part thereof for delay in payment of TDS after due date
- Fees of INR 200 per day for late filing of TDS Return. The fees is restricted to the TDS amount.

8th January, 2020

GBCA & Associates LLP
Chartered Accountants

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