

FREQUENTLY ASKED QUESTIONS UNDER FOREIGN EXCHANGE MANAGEMENT ACT (FEMA) FOR NON-RESIDENT INDIANS (NRI)

Many Indians move abroad to foreign nations for various purposes such as education, employment, etc. and also settle there. When a person moves abroad, his residential status may change from Resident to Non-Resident under FEMA depending upon the number of days he resides outside India as well as intention of such person to stay outside India for uncertain period. When the residential status changes, along with the provisions of Income Tax Act, 1961, he also has to adhere to the provisions of FEMA which regulates various types of investments in India by the NRIs. The terms Persons resident outside India, NRI and PIOs are defined specifically under the FEMA regulations. This article is primarily focused on Indians who have left the country to reside abroad.

Following are the frequently asked questions for the NRIs:

1) When a Resident becomes an NRI, whether he has to change his bank account?

Yes. Such a person has to close his regular saving account and open Non-Resident Ordinary Rupee Account (NRO) / Non-Resident External Rupee Account (NRE).

2) What is the meaning of Investment on Repatriation and Non-Repatriation basis?

- Investment on Repatriation basis means that the sale proceeds, profits and dividends/interest (net of taxes), are eligible to be freely remitted outside India.
- Investment on Non-Repatriation basis means that the investment made by the NRI cannot be freely remitted outside India. The investment proceeds have to be accumulated in the NRO Account. Only the current income in the form of dividend or interest, net of taxes, can be remitted.

3) What is the scheme available for making remittances from India to a foreign country?

- RBI has introduced the USD one million dollar scheme under which proceeds of non-repatriable investment can be remitted outside India per financial year.

Note: The scheme is governed under certain terms and conditions and also are subject to reporting compliance.

4) Can NRIs invest in shares and mutual funds on Indian stock exchange?

Yes. NRIs can purchase shares, mutual funds, Exchange Traded Funds on Indian stock exchange under the Portfolio Investment Scheme (PIS) subject to reporting compliance. The DEMAT account should be linked with the NRE Account.

They can also invest in Initial Public Offer (IPO) of to be listed companies under PIS. NRIs can also invest in shares and mutual funds on non-repatriation basis without any reporting compliance.

5) Can NRI make direct investment in shares of a private/public Indian company?

Yes, an NRI can make direct investment in shares of listed as well as unlisted company subject to certain conditions and reporting obligations. The investment can either be on repatriation basis or non-repatriation basis. Please seek advice before making investments to comply with regulations.

6) Can NRI borrow money from his resident relatives?

- Yes. He can borrow money in rupees from his resident relatives (as defined under Companies Act, 2013) within the limit of USD 250,000 per resident relative per financial year.
- Such borrowed funds have to be deposited into the NRO account of such NRI and can be used only for his personal purposes and own permitted business and not for relending nor investments.
- Further, the proceeds of the said loan cannot be remitted outside India.

Note: The term 'relative' is very narrowly defined under section 2(77) of Companies Act, 2013. 'Relative' includes Father (Including Step-Father), Mother (Including Step-Mother), Sons (Including Step-Son), Son's Wife, Daughters, Daughter's Husband, Brothers (Including Step-Brother), Sisters (Including Step-Sister) and members of HUF.

7) Can NRI receive any gifts from his resident relatives in Indian Rupees or even foreign currency after he becomes person resident outside India?

- Yes. A resident individual can gift his NRI relatives in Indian rupees as well as foreign currency under Liberalized Remittance Scheme (LRS) within the limit of USD 250,000 per resident relative per financial year.
- Gift received in Indian rupee can be deposited only in NRO Account. It can be remitted outside India under the USD One Million scheme (Q.4).

Note: For the purpose of Gifts, definition of the term relative under Companies Act, 2013 as

mentioned above in Q.7 is to be applied. Also, one has to keep in mind the gift tax laws of the foreign country in which such NRI resides.

8) Can NRI continue his investment in PPF account and National Savings Certificate (NSC) after he becomes a person Resident outside India?

- An NRI cannot open a new PPF Account. However, if a resident who had a PPF Account subsequently becomes a non-resident then he can continue to subscribe to the fund till its maturity on a Non-repatriation Basis.
- Similarly, NRIs cannot invest in NSCs. However, if a Resident had purchased NSC, and subsequently becomes a non-resident, he can hold it till the period of maturity of the Certificate.

9) Can NRI continue his LIC, medical Insurance and other insurance policies after he becomes a person resident outside India?

Yes. Indian person becoming Non Resident can continue paying the premium on the LIC and other existing policies for insurance etc.

10) Can NRI continue loans given to residents while such NRI was a resident?

Yes. NRI can continue loans given to residents given in their capacity as residents. Any new loan/new instalment will have to be given as per extant FEMA regulations only and all the applicable terms and conditions pertaining to end use, maturity period, rate of interest etc. are to be followed.

11) Can NRI continue as a partner in the Indian partnership firm and LLP?

- Yes. He can continue to be a partner in the Partnership Firm/LLP subject to applicable terms and conditions, provided the partnership firm/LLP is not engaged in prohibited sectors for investment by NRIs in partnership firms/LLPs.
- Fresh investment by NRI in Indian Partnership Firm/LLP can be made only on non-repatriation basis.

12) Can NRI acquire immovable property in India?

Yes, an NRI can purchase immovable property in India other than a plantation, farmhouse and agricultural property. He can also acquire property in India by way of gift from Residents or from another NRI who are relatives as per Companies Act, 2013 (mentioned in Q. 7).

13) After NRI returns to India, can he still continue to hold his bank account, investments and property in the foreign country?

Yes. Under FEMA, any person who was once a Non-Resident, can continue to hold his foreign bank accounts, investments and properties abroad even after he becomes a person resident in India.

14) What are the penal consequences for non-compliance of any provisions under FEMA?

Any person contravening FEMA provisions may be liable to a penalty as under:

- Penalty upto thrice the sum involved in such contravention where such amount is quantifiable
- Penalty up to INR 200,000 where the amount is not quantifiable.
- If such contravention is a continuing one, further penalty upto INR 5,000 per day during which the contravention continues can also be levied.

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