

Who is NRI

Definition of an NRI:

1. Introduction:

An Indian abroad , popularly known as an NRI – has two important definitions determining his residential status - the primary one coined under the Foreign Exchange Management Act, 1999 – [FEMA] and the other coined under the Income Tax Act,1961.[ITAct]

2. NRI definitions under FEMA :

The most relevant definition concerning an NRIs various bank accounts and investments in movable and immovable properties in India is the one provided under FEMA, which has replaced the Foreign Exchange Regulation Act , 1973- [FERA] with effect from 1st june,2000.

01. Person Residing Outside India is the term used for an NRI , being a person who has gone out of India or who stays outside India for the purpose of employment or carrying on business or vocation outside India or any other circumstances which indicate his intention to stay outside India for an uncertain period.

02. Non Resident Indian, the phrase not defined under FERA is now covered by regulations under FEMA as "a person resident outside India who is either a citizen of India or a person of Indian Origin".

03. And the definition of a "Person Resident outside India" is simply put as "a person who is not Resident in India."

04. Person of Indian Origin [PIO] : includes a person, being a citizen of any country other than Pakistan and Bangladesh who :

- i) held an Indian Passport at any time . or
- ii) himself or either of his parents or any of his grand parents were citizens of India, or
- iii) Is a spouse of an Indian citizen, or
- iv) is a spouse of a person covered under (i) or (ii) above.

5. Conditions of number of days stay in India :

01. No doubt, FEMA definition has also incorporated an NRIs stay in India totaling to 182 days or more during preceding year , but simply speaking if a person of Indian origin visiting India is to be treated as an NRI irrespective of number of days he has stayed in India during the relevant financial year provided he has not returned to India for settlement.

02. Stay in India during visits :

The Act also lays down that such a person will continue to be an NRI during his visit/stay in India provided he has not returned to India for taking up employment or carrying on business or vocation or any other circumstances as would indicate his intention to stay in India for an uncertain period.

Accordingly, an NRI settled abroad , irrespective of the number of days stay in India in a given year , will continue to be an NRI during his visit to India provided he has not returned to India for permanent settlement.

6. **"Overseas Corporate Body" (OCB)**

- Overseas Corporate Bodies ("OCBs") are bodies predominantly owned by individuals of Indian nationality or origin resident outside India (NRI) and include overseas companies, partnership firms, societies and other corporate bodies which are owned, directly or indirectly, to the extent of at least 60% by individuals of Indian nationality or origin resident outside India (NRI) as also overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons.
- Such ownership interest should be actually held by them and not in the capacity as nominees. The various facilities granted to NRIs are also available with certain exceptions to OCBs so long as the ownership/beneficial interest held in them by NRIs continues to be at least 60%.

Investment avenue for NRIs and OCBs in Indian Capital Market

NRIs intend to trade on the stock exchanges in India, will have to comply with the requirements of the **Portfolio Investment Scheme**, (PIS) which are stipulated in terms of Schedule 3 to Notification No.FEMA 20/2000-RB dated 3rd May , 2000.

OCBs are not allowed to make fresh investments in India under the Portfolio Investment Scheme vide Notification No. FEMA 46 dated 29th November 2001. Further, in September 2003, RBI has banned OCBs from investing in any manner in India. In fact, the category of OCB has been abolished. However, they can continue to hold and sell shares purchased before 29th November 2001.

Foreign Nationals do not have any scope presently for direct entry in Indian Stock Market, they have to enter through any FII or Sub-Account.

Portfolio investment is covered by general permission subject to following condition/provisions.

- (i) Investment is permitted on repatriation as well as non-repatriation basis.
- (ii) Purchases, sale of shares (Preference and Equity) and/or convertible debentures are covered.
- (iii) Purchase/sale is done through registered broker of a registered broker of a recognised stock exchange.
- (iv) One bank branch must be designated by NRIs and all purchase/sale must be routed through that designated bank branch only.

(v) All transactions of sales and purchase must be delivery based. Speculative transactions are not allowed.

(vi) Mode of investment may be in any of the following ways:

(a) For investment on Repatriation basis

- inward remittances through normal banking channels
- out of FCNR/NRE account.

(b) For investment on non-repatriation basis Besides the above two, investment can be made out of NRO account.

(vii) Ceiling on Investment

(a) Per investor (Each NRI)

- 5% of the paid-up value of shares of an Indian Company on both repatriation and non-repatriation basis.
- 5% of the value of each issue of convertible debenture of an Indian Company on both repatriation and non-repatriation basis.

(b) Per investee Company

(Total holding by all NRIs put together on both repatriable as well as non-repatriable basis.)

10% of paid-up value of shares of an Indian Company.

10% of paid-up value each series of convertible debenture.

This ceiling of 10% could be increased to 24%, if the General Body of concerned Indian Company passes a special resolution to that effect. It is interesting to note that FIIs are allowed to increase their investments under portfolio investments scheme up to the sectoral cap. Whereas NRIs are allowed to increase the limit only up to 24%.

(viii) Repatriation of Sale/Maturity Proceeds

(a) Sales proceeds of Investment held on repatriation basis can be credited to NRE/FCNR/NRO account after payment of applicable taxes.

(b) If investment is on non-repatriation basis, credit of sale/maturity proceeds is permitted in NRO account.

(ix) Existing OCBs (i.e. prior to Sep 16, 2003) must intimate the designated bank branch immediately on the holding/interest of NRIs in the OCB becoming less than 60%.

(x) NRIs are allowed to enter into forward contracts to hedge their investment made in India.

(xi) NRI is also permitted to invest in exchange traded derivatives contracts approved by SEBI from time to time out of his Rupee funds held in India on Non-Repatriable basis subject to the limits described by SEBI.

(xii) NRIs can also invest without limit on repatriable basis in Government dated securities, treasury bills, units of domestic mutual funds, bonds issued by PSUs, shares

in public sector enterprises which are being disinvested by Government. They can also invest without limit on non-repatriable basis. In Government dated securities, treasury bills, units of Domestic mutual funds, units of Money market mutual funds. However, NRIs are not permitted to make Investments in Small Savings Schemes including PPF.

Practical Issues

(i) Can NRIs take their securities outside India?

There is no express prohibition in FEMA. As such “demat” being in vogue, physical transfer of security assumes little or no significance. Under FERA, general permission was granted for taking securities outside India.

(ii) Can NRIs invest under portfolio investment scheme out of funds borrowed in India?

No. NRIs cannot invest out of borrowed funds in India.

(iii) Can power of attorney holder manage portfolio on behalf of NRIs?

Yes. A power of attorney holder can manage portfolio on behalf of NRIs. However, he cannot effect remittance outside India. With internet trading, life of NRIs has become easy for portfolio investments.

(iv) Can NRIs avail of loan against such securities?

Yes. NRIs can borrow against shares or other securities. However, the loan should be utilized for meeting the borrower’s personal requirements or for his own business purposes.

(v) Is any approval required from anyone to begin Portfolio Investment?

NRIs do not need any approval to undertake Portfolio Investment. They have to comply with the guidelines. FIIs need approval of SEBI and RBI. An application has to be filed with SEBI as the relevant rules. The application is forwarded to RBI. Both approvals are available simultaneously. One does not have to approach SEBI and RBI independently. In fact for FIIs, SEBI is the monitoring authority. Detailed rules are laid down under the SEBI law.

(vi) How can NRI begin portfolio Investment?

NRIs should comply with the following conditions:

- The NRI designates a bank branch for routing all his purchase and sale transactions through that Bank branch only.
- Purchase and sale is carried out through a registered broker on a recognized stock exchange.
- All transactions of purchase and sale must be delivery based.

Speculative transactions are not allowed.

(vii) Can income earned on Portfolio Investment be remitted abroad?

Income such as interest and dividend earned by NRI from portfolio investments acquired whether on repatriation basis or on Nonrepatriation basis, can be remitted abroad provided applicable taxes have been deducted/paid. However capital gains can be repatriated only if investment is on repatriable basis.

(viii) Are NRIs required to file any reports to RBI?

The NRI investor is not required to file any Return or Report with the RBI with regard to acquisition or sale of shares and/ or debentures in an Indian Company. Only the link office of the designated bank branch is required to furnish a report on daily basis on Portfolio Investment Scheme Transactions to RBI.

Transactions covered under PIS:

Only secondary market purchase and sales of shares / convertible debentures of Indian companies by NRI's are within the ambit of the PIS scheme.

Transactions excluded from the ambit of PIS:

- Securities purchased as a resident individual are not covered under this scheme.
- Derivative segment transactions or Mutual fund unit purchases
- Shares purchased through IPO's (Initial public offers)

Getting Started

1. OPEN A Bank Account

- a.** Firstly you need to open a bank account and decide whether you need to trade on a repatriable or a non repatriable basis. Now if you already have bank accounts should check with your bankers to find out whether those are suitable for stock trading. Know that you can nominate only one bank account for your stock trading. Some of the leading private banks are competent in this regard and can help you open an account through the internet that can be faster. **We shall assist you opening the Bank Account.**
- b. Difference between investments on repatriation basis and non-repatriation basis** - If you want to bring in USD 10000 into India and have decided to stay back, then you can invest that money and you won't have to go through much paper work particularly when it comes to taxation. Now that is non-repatriable. An NRO Account is required for this. But if you want to take the principal plus the profits out then it will be repatriable and you would need an NRE account in which case you would be allowed to take out the principal and the profits after paying the due taxes.

- c. You would have to ask your bank for Portfolio Investment Scheme (PIS) approval. It is for your bank to verify your paper work.
- d. You have to open two Bank Accounts – NRE / NRO Savings and NRE / NRO PIS Account.

2. APPLY FOR PAN, IF YOU DO NOT HAVE

PAN Card is mandatory for investment in Indian Stock Market, Mutual Funds, IPO etc. Earlier obtaining PAN Card was a difficult task for an NRI as providing details of a Representative Assessee was mandatory for application for PAN. As per Income Tax Act, Representative Assessee was subject to the same duties, responsibilities and liabilities as the NRI and if the NRI failed to pay his tax dues, such tax was levied upon and recovered from the Representative Assessee. This effectively meant that those NRIs who did not have a person in India who was ready to take on such heavy responsibility of being his Representative Assessee were not in a position to invest in India.

In 2006, Income Tax Department has removed this provision.

NSDL and UTI provide the service of issuing PAN Card. You can download the PAN Application Form from their website www.nsdl.co.in, www.utitsl.co.in

Documents required for PAN Application:

1. Proof of Identity – Copy of Passport
2. Proof of address – Copy of any one of the following
 - Copy of Passport
 - Copy of Bank Account in country of residence
 - Photograph

3. OPEN A DEMAT AND TRADING ACCOUNT

You can open a demat and trading account with us. You need to mention the type ['NRI' as compared to 'Resident'] and the sub-type ['Repatriable' or 'Non-Repatriable'] in the account opening form. You have to open separate demat accounts for holding repatriable and non-repatriable securities.

No permission is required from RBI to open a demat account and trading account. However, credits and debits from demat account may require general or specific permissions as the case may be, from your PIS Bank.

Documents required for opening Demat and Trading Account:

- 1) Photocopy of NRI PAN Card. As it is mandatory to open Demat Account, apply now immediately if you dont have.

- 2) Photocopy of Valid Passport (Copy of the Pages having your Name, Address and Photo).
- 3) Photocopy of Visa (Photocopy of Entry and Exit Stamps).
- 5) Photocopy of Foreign Address Proof.
- 6) Your recent passport Photograph.
- 7) Bank proof on your name - copies of 3 months bank statement – NRE or NRO savings account as the case may be.
- 8) Copy of PIS (Portfolio Investment Scheme) approval letter
- 9) Two copies photograph

[Copy of Passport, PAN Card, Foreign Address Proof and Bank Statement should be attested by Indian Embassy / Consulate General of the country of residence).

Note:

If you are an **Employee of Foreign shipping Company or Merchant Navy** then you wouldn't be having any Foreign address proof. In such case you should provide following documents only in the place of foreign address proof. Remaining all the documents are required as said above. These documents are as follows.

- 1) Your Appointment (or) Contract letter from current employer.
- 2) Latest Salary Slip

Other aspects:

- You do not require PIS permission to purchase shares in primary market (IPOs) on repatriable or non-repatriable basis and to sell the shares.
- You can issue Power of attorney duly stamped, signed and notarized, authorizing your local representative to act as your attorney, to operate your investments in India.
- You do not require PIS permission to sell shares which were allotted as rights / bonus basis, on the shares which were originally purchased in primary market (IPOs) on repatriable/ non repatriable basis.
- You do not require PIS permission for investment in Mutual Fund.

Just contact us if you are interested to invest in Indian Market – whether IPO or Mutual Fund or Equity or Derivatives, we shall guide you and provide you all sort of service except Banking. We always are at your service.

For all your queries and service requirement, you can mail us at

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