



INFODIVE

FEMA | International Tax | Transaction Advisory

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RELIEF FOR TAXATION OF FOREIGN RETIREMENT BENEFIT ACCOUNT

A large number of individuals living in India who have retired or have returned to India post-employment in foreign countries and continue to hold their foreign retirement benefit accounts, most commonly known as individual retirement account (IRA), require clarity about the taxation issues in India for such IRA. Generally, retirement benefit accounts may be taxed on withdrawal in such foreign countries, while on an accrual basis in India resulting in a mismatch in taxation of accrued income.

To address this mismatch, Finance Act, 2021 inserted Section 89A in the Income Tax Act, 1961 w.e.f. F.Y. 2021-22 to provide for taxation of the income accrued on foreign retirement accounts maintained in notified countries. **CBDT has recently notified Rule 21AAA vide notifications¹ to provide an option to individuals to tax such income on withdrawal/redemption basis instead of accrual basis. The said option is effective from F.Y. 2021-22 onwards.**

No matter how complicated the procedural aspect seems like, following action points will surely give a quick head start to exercise the option:-

- a) Determine residential status for current year and when the retirement account was opened (under Indian as well as foreign country's domestic tax laws)
- b) Identify eligible retirement benefit account(s) held in USA, UK or Canada
- c) Document taxability of income accrued on such retirement benefit account under foreign country's domestic tax laws
- d) Analyse the Indian tax treatment for earlier years

- e) Obtain Retirement Benefit Account Statements, foreign country tax returns and other forms filed along with evidence of taxes paid in foreign country for future tax inquiries
- f) Prepare the reconciliation statement based on previous Indian Income Tax Return filings
- g) Check whether Income Tax Account on the portal is EVC enabled or digital signature certificate (DSC) is available for filing the form
- h) Disclose all foreign Retirement Benefit Accounts in Indian Income tax Return under Foreign Assets and Income Schedule failing which penal consequences may arise under Black Money Act

To know more in detail, please [click here](#).



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¹ CBDT Notification No. 24/2022 and Notification 25/2022 dated 4th April 2022

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY

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

However, owning or transferring a property in India is governed by various regulations in India and failure to comply with those regulations can attract monetary as well as other penal actions. Similarly, resident owning a property outside India is also under the purview of Foreign Exchange Management Act, 1999 (FEMA). One should be aware of the various provisions pertaining to the purchase or transfer of an immovable property in India and outside India under FEMA as well as Income Tax Act, 1961.

This newsletter provides a bird's eye view on regulatory & tax aspects for acquiring and transferring immovable property in India and outside India.

FEW IMPORTANT CONCEPTS TO KNOW

- **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 the Citizenship Act, 1955.
- **Relative**: Relative for the purpose of these transactions shall mean relative as defined in Section 2(77) of the Companies Act 2013 i.e. father, mother, brother, sister, son, daughter, son's wife and daughter's husband.

PIO without OCI cannot acquire immovable property

ACQUISITION OF IMMOVABLE PROPERTY IN INDIA

GENERAL PERMISSION

- NRIs and OCIs can acquire immovable property in India through the following modes:
 - a) **By Actual Purchase**: From a Resident, NRI or OCI, other than an agricultural land, farmhouse or plantation property.
 - b) **By way of Gift**: From a Resident, NRI or OCI who are relatives as per above definition without limit, other than an agricultural land, farmhouse or plantation property.
 - c) **By way of Inheritance**: From a person resident outside India who had acquired property in accordance with FEMA regulations or a person resident in India.
- A person resident outside India can continue to own or transfer any immovable property in India, if such property was acquired or owned by the person when he was a person resident in India or inherited from a person resident in India.
- There is no general permission for acquisition of immovable property in India by foreign nationals.

MODE OF PURCHASE

The payment for acquiring the property can be by the following modes:

- a) Inward remittance through normal banking channels
- b) Non-resident Account (NRO / NRE / FCNR) maintained in accordance with FEMA regulations.

Payments cannot be done by traveller's cheque or foreign currency notes or any other mode except those specifically mentioned above.

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JOINT ACQUISITION OF PROPERTY

- A foreign citizen, who is a spouse of a NRI or an OCI may acquire one immovable property (other than agricultural land, farmhouse or plantation property), jointly with NRI/OCI spouse subject to below conditions:
 - a) Consideration should be paid as per mode of payment mentioned above.
 - b) The marriage has been registered and subsisted for a **continuous period of atleast 2 years** preceding the acquisition of such property.
 - c) The non-resident spouse is not otherwise prohibited from such acquisition.

ACQUISITION OF IMMOVABLE PROPERTY FOR CARRYING ON A PERMITTED ACTIVITY

- A person resident outside India who has established a branch, office or other place of business for carrying on in India any activity, can acquire any immovable property in India which is necessary for or incidental to carrying on such activity subject to the following conditions:

(i) all applicable laws, rules, regulations, for the time being in force are duly complied with and

(ii) a declaration in specified Form IPI is filed with the RBI within 90 days from the date of acquisition.

- They can also transfer the immovable property acquired above by way of mortgage to an authorised dealer as a security for any borrowing.

Liasion Office cannot acquire immovable property in India.

TRANSFER OF IMMOVABLE PROPERTY IN INDIA

- NRIs/OCIs can sell or gift any immovable property in India to a person resident in India.

- NRI/OCI can sell or gift immovable property to another NRI/OCI, except agricultural land, farmhouse or plantation property.

NRI/OCI cannot purchase immovable property in India by paying consideration outside India.

PROHIBITION ON ACQUISITION AND TRANSFER BY CITIZENS OF SOME COUNTRIES

Following persons are prohibited from acquiring or transferring immovable property in India, other than lease upto 5 years:

- a) Any person who is citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China Iran, Nepal, Bhutan, Hong Kong, or Macau or Democratic People's Republic of Korea (DPRK). Prior permission of the RBI is required to acquire or transfer immovable property in India
- b) Above prohibition is not applicable if such person is **an OCI**.

REPATRIATION OF SALE PROCEEDS

Property acquired by way of Repatriable Mode – FCNR/NRE Account

- If the property was acquired by way of inward remittance or out of funds held in FCNR/NRE account and in compliance with foreign exchange laws in force, sales proceeds can be freely repatriated outside India without any RBI permission.
- **However, in case of residential house, repatriation is restricted to maximum for two properties during the lifetime.**

Foreign citizens (other than spouse of NRI/OCI) cannot acquire immovable property in India.

No restrictions on repatriation of commercial properties acquired through Repatriable mode.

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Property acquired by way of Non-Repatriable Mode –NRO Account

- The sales proceeds cannot be freely repatriated outside India. However, NRIs can repatriate funds lying in his/her NRO Account on account of sale proceeds upto USD 1 Million per financial year subject to conditions and reporting. For remittance exceeding USD 1 Million in a financial year, RBI approval is required.

ACQUISITION OF IMMOVABLE PROPERTY OUTSIDE INDIA

GENERAL PERMISSION

- A person resident in India can acquire immovable property outside India through any of the following modes:
 - a) By way of purchase of property from a resident or a non-resident
 - b) By way of inheritance/gift of property from a person who had acquired it when he was resident outside India or acquired on or before 08.07.1947.
 - c) Jointly with a relative outside India provided there is no outflow of funds from India. For this purpose, 'relative' means husband, wife, brother, sister or any lineal ascendant or descendant of the individual.
- Indian companies having overseas offices may acquire immovable property outside India for its business and for residential purposes of its staff in accordance with the extant regulations. The regulations are silent on whether similar provision can be applied to an Indian LLP having overseas office.

MODE OF PURCHASE

- Residents can make payment from one of the following mode:

- a) Out of balances held in the Resident Foreign Currency (RFC) account of the resident.
 - b) Remittance under the Liberalised Remittance Scheme (LRS)
 - c) Funds held outside India when he was a non-resident
- Currently, under LRS, Resident individuals are allowed to freely remit funds abroad upto USD 2,50,000 per financial year from April to March.
 - However, if the family members pool their remittances to purchase a property then such members have to be co-owners.
 - Remittance under LRS should be from self-owned funds and not from borrowed funds.
 - It is pertinent to note that the Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.
 - There is no clarification under the current LRS regulations to acquire to property in installments without obtaining RBI approval.

REPATRIATION OF SALE PROCEEDS

- Resident individuals receiving gift of immovable property outside India from a non-resident need to sell such property and bring the funds back to India or apply to RBI for specific permission to hold such property.



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TAX IMPLICATIONS ON INCOME FROM IMMOVABLE PROPERTY

GENERAL PROVISIONS

Income from House Property

As per the Income Tax Act, any income earned by letting out of the immovable property is chargeable to tax as Income from House Property. One can claim the following deductions from the rent income:

- a) Municipal taxes paid during the financial year
- b) Standard deduction @30%
- c) Interest on account of borrowed capital

When a taxpayer owns more than two house properties which he does not let out, then third property onwards shall be deemed to be let out and chargeable to tax as Income from House Property.

Capital Gains

- Any income from sale of an immovable property in India by NRIs/OCIs and outside India by person resident in India shall be subject to tax in India.
- The capital gains arising on sale of immovable property within 2 years of its acquisition is classified as Short Term Capital Gains. This short-term capital gain is taxable as per the Income tax slab rate of the person in India.
- The capital gains arising on sale of immovable property, which is held atleast for 2 years is classified as Long Term Capital Gains. This long-term capital gain is chargeable to tax in India at 20% (plus applicable surcharge and cess) after availing indexation benefit.
- One may claim benefit of long-term capital gains exemption under the Income Tax Act, subject to satisfaction of conditions as prescribed in the provisions.

TRANSFER OF PROPERTY IN INDIA BY NON RESIDENTS

- Under Income Tax Act regulations any person making payment to a non-resident needs to deduct tax at source as per the given rates in force. Thus, it is essential to note the following:
 - a) Any person making payment, as sale consideration for the property needs to deduct tax on the gross value as per the rates in force or as mentioned in the lower TDS certificate.
 - b) For remitting sales proceeds outside India or for transferring funds to the NRE account Form A2, Form 15CA & Form 15CB (Chartered Accountant Certificate) needs to be submitted to the bank along with other supporting documents.
- Besides the above, NRIs/OCIs should also evaluate tax implications if any in their home country.



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TRANSFER OF PROPERTY OUTSIDE INDIA BY RESIDENTS

- The tax implications on sale of immovable property is explained above.
- However, if the investment in the immovable property outside India was done under the LRS then the resident can continue to hold the sale proceeds of the property outside India and even reinvest the funds.

CONCLUSION

Acquisition and Transfer of immovable property in India and outside India has been an area of curiosity considering everyone's interest to investment in property not only as an investment option but also as a necessity to obtain a place to stay or a place to set up a business. However, while capitalizing on the need to buy a property one should ensure the above foreign exchange laws and regulations to avoid any non-compliance.

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Disclaimer:

The information contained in this write up is to provide a general guidance to the intended user. The information is based on our interpretation of various prevailing laws, rules, regulations, pronouncements as on date mentioned below. The information should not be used as a substitute for specific consultations. The information has been provided in simplified manner for general reference of the public which can lead to interpretation not intended under law. Hence, we recommend that professional advice is sought before taking any action on specific issues before entering into any investment or financial obligation based on this Content.

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