

INVESTMENT AND TAX INCENTIVES FOR NON-RESIDENT INDIANS

Summary of some important provisions
(Revised Edition - October 9, 2011)
Russi J Patel FCA

For private circulation only

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Russi J Patel, FCA

India is a country of overpowering size and incredible complexities. On the one hand, we are seeing the building of a new society with emphasis on technological advances and economic progress whereas on the other we are silent witnesses to a daily saga of poverty, conflicts and confrontation. It is in this context that I would like all of us to prepare for and participate in the future progress and prosperity of our Country not only through financial investments and technological advances but very importantly through cultivation of the traditional institution of family, of learning and above all through understanding of the problems and misfortunes of our fellow beings.

FOREWORD



Mr. Russi Patel and myself have served for many years in the past as members of the NRI Consultative Committee set up by the Government of India and in that capacity we have played a pivotal role to make Government of India accept Overseas Indians as its integral part.

I have known Russi for his sincerity and dedication to promote the requirements of NRIs for a very long time and his contribution in making Government of India abolish the draconian Estate Duty law has been greatly appreciated by all Indian citizens.

Russi's efforts in continuing to make available such a valuable publication like **"Investment and Tax Incentives for Non-Resident Indians"** free of charge, to the Indian expatriates, have been greatly appreciated. I am sure the readers are going to gain substantially from his work.

Dr. Ram Buxani
President
ITL-Cosmos Group
and Founder Chairman
Erstwhile Overseas Indians
Economic Forum - UAE

Dubai: October 9, 2011

PREFACE

From a non-resident Indian (NRI) perspective, India, with its vast natural, human, industrial and technological resources offers a huge potential for economic growth and progress.

The commitment of the Indian Government to continue the existing progressive reform policies which encourages domestic and foreign investment, is creating a sustained private sector growth, particularly as more trading, industrial and financial sectors are being opened to competition and stock market reforms have improved access to capital markets. In the new economic environment, Government intervention appears to be going down, borrowing costs and tax burdens are also being lowered, and a combination of all these with the low labour costs and the availability of skilled manpower, the possibilities of growth in most sectors of the economy are becoming increasingly real.

However, in the context of globalisation of trade and commerce and the recent national and international developments, the Government should accelerate the reform process by encouraging investments in infrastructure, easing foreign direct investment norms and removing procedural and bureaucratic hurdles. The thrust has to be to develop, throughout the Country, particularly the States, and at all levels, the response, the systems, and accountability that will accelerate growth of investible resources in people's hands, reward the achievers, and discourage those obstructing the path to progress.

In the final analysis, I can confirm that the concessions and benefits offered to NRIs and to non-resident foreign citizens of Indian Origin (PIO) and Overseas Citizens of India (OCI) for investing in India, are, generally speaking, fair and reasonable and would compare favourably with similar concessions available to foreign investors in many other countries.

The laws and regulations governing these concessions are, however, quite elaborate and complex and cover a wide range of subjects including taxation, banking,

exchange control, commercial, industrial and property investments etc. An attempt is being made to provide in this summary a broad outline of some of the important provisions, which may be of interest to NRIs/PIO/OCI investing in India.

This summary has been compiled with reference to the available information and the provisions of the relevant laws and regulations currently in force. It must, however, be emphasised that there are several other provisions in the various Acts, Rules and Notifications which may have a significant impact on individual investment and tax planning decisions of the investors and it would be advisable to seek professional help and guidance when deemed necessary.

I am indeed very grateful to Dr. Ram Buxani, President ITL - COSMOS Group and Founder Chairman, Erstwhile Overseas Indians Economic Forum - UAE, for writing a new Foreword for this publication.

I take this opportunity to thank my professional colleagues in India, Mr. Rajesh Dhruva, Chief Executive 'nribanks.com', Mr. Ashwin Damania and Mr. Harsh Shah, Partners, G. M. Kapadia & Co. for their valuable advice and guidance.

DUBAI: October 9, 2011

RUSSI J PATEL

Mr. RUSSI J PATEL, FCA

PROFILE

Mr. Russi J. Patel, Fellow Member of the Institute of Chartered Accountants of India, is the Managing Partner of BDO Chartered Accountants & Advisors one of the leading professional firms established in the Gulf region for over 40 years. The firm is a member of BDO International, currently the world's fifth largest international accounting organisation and Mr. Patel is a member of its Council. Mr. Patel is also qualified and licensed to practice public accountancy in the United States and is a certified member of the Institute of Financial Consultants. He is also a recognized member of the Institute of Management Accountants, the Offshore Institute and the International Tax Planning Association. He has served for many years as a member of the NRI Consultative Committee set up by the Government of India. He is the Founder Member and Chairman for more than one period of office of the Dubai Chapter of the Institute of Chartered Accountants of India and was recently honoured at the 30th year inaugural function of the chapter in recognition of his services. Mr. Patel is also a member of the Representative Committee of the Auditors group constituted under the auspices of Dubai Chamber of Commerce & Industry. Many awards and honors have been conferred upon Mr. Patel and the most recent one is the Lifetime Achievement Gold Star Award, from a prominent NRI Group, in recognition of his service to Humanity and Contribution to the Economic Development of India and the Country of his adoption, UAE. He has also received the BDO Medal in recognition of his continuous commitment and significant contribution to the development and promotion of BDO around the world and in the Middle East region.

CONTENTS

Chapter	Subject	Page No.
I.	NRI, Person of Indian Origin and OCB - PIO Card Scheme - Overseas Citizenship of India	1-4
II.	Residential Status for tax purposes and Chargeable Income	4-7
III.	Residential Status under FEMA	7-8
IV.	Implications of Residential Status for NRIs/PIO	9
V.	Tax Planning - Special concessions - Tax exemptions - Advance Rulings	9-16
VI.	Investment Incentives - Repatriable Investments - Non-Repatriable Investments	16-24
VII.	Investment in Immovable Property	24-27
VIII.	Loans and Advances	27-33
IX.	Import of Gold and Silver	33-34
X.	Returning Indians	34-35
XI.	Other miscellaneous provisions	35-38
XII.	Double Taxation Avoidance Agreements	38

CHAPTER I

NRI, PERSON OF INDIAN ORIGIN AND OCB

Special facilities and concessions granted to non-resident Indians (NRIs), barring a few exceptions, are also made available to non-resident foreign citizens of Indian origin resident outside India.

A foreign citizen (not being a citizen of Pakistan or Bangladesh) is deemed to be a person of Indian origin for the purpose of opening and maintenance of bank accounts or making investments in shares and securities in India, if he/she, at anytime, held an Indian passport OR he/she or either of his/her parents or any of his/her grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act 1955. A spouse (not being a citizen of Pakistan or Bangladesh) of an Indian citizen or of a person of Indian origin, is also deemed to be a person of Indian origin (PIO) for the above purposes. For investment in Partnership or Proprietorship Firms, citizens of Pakistan, Bangladesh and Sri Lanka and for acquiring immovable properties, citizens of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan are excluded from the definition of PIO.

Overseas Corporate Bodies (OCBs) comprise overseas companies, partnership firms, societies and other corporate bodies which are beneficially owned, directly or indirectly, to the extent of at least 60% by individuals of Indian nationality or origin resident outside India as also overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons.

Until 16th September 2003, OCBs were treated almost at par with NRIs/PIOs and granted various facilities for investments in India on repatriation/non-repatriation basis.

However, the Reserve Bank of India (RBI), on 16th September 2003, in consultation with the Government of India, has de-recognized OCBs as an eligible class of investor in India under various rules and schemes previously applicable to them. Accordingly OCBs are not permitted to make fresh investment in Shares, Securities, Debentures, Mutual Funds, Treasury Bills, National Plan/Savings Certificates, Deposits with Companies or Firms etc. OCBs cannot open and maintain Non-Resident (External) Rupee Account (NRE), Foreign Currency Non-Resident Account (FCNR) and Non - Resident Ordinary Rupee (NRO) Deposit Accounts with Aauthorised Dealers in India. OCBs are also required to close their NRE (Savings, Current) Accounts except that all NRE, FCNR and NRO deposit accounts will be allowed to be continued till maturity. OCBs have also been permitted to continue to hold all existing investments till the same are sold/redeemed.

PERSONS OF INDIAN ORIGIN (PIO) CARD SCHEME

The Government has launched a comprehensive Scheme for Persons of Indian Origin - called the "PIO Card Scheme". Under this Scheme, all Persons of Indian Origin who hold passport of any other country (not being a citizen of Pakistan or Bangladesh or any other country as may be specified by the Central Government from time to time) will be eligible to apply for PIO Card, if such person:

- (i) at any time held an Indian passport; or
- (ii) such person or either of his/her parents or grand parents or great grand parents was born in and permanently resident in India; or
- (iii) is a spouse of a citizen of India; or
- (iv) is a spouse of a person of Indian origin covered under (i) and (ii) above.

The Card would be issued to eligible PIO and his/her spouse through the concerned Indian Embassies/High Commissions/Consulates in foreign countries. For those staying in India on long-term visa (more than one year), the Card will be issued by (a) the concerned Foreigners Regional Registration Officer in Delhi, Mumbai and Kolkata (b) the Chief Immigration Officer in Chennai and (c) Joint Secretary (Foreigners), Ministry of Home Affairs, Delhi for all other Indian cities.

The fee for the Card, which will have a validity of 15 years (subject to the validity of the PIO's passport) is currently fixed at US\$ 310 in case of an adult and US\$ 155 in case of children.

Besides making their journey back to their roots simpler, easier and smoother, this Scheme entitles the PIO to a wide range of economic, financial, educational and cultural benefits. The benefits envisaged under the Scheme include :

- (i) No requirement of visa to visit India;
- (ii) No requirement to register with the Foreigners Registration Officer if continuous stay does not exceed 180 days. If continuous stay exceeds 180 days, then registration is required to be done within a period of 30 days of the expiry of 180 days;
- (iii) Parity with Non-Resident Indians in respect of facilities available to the latter in economic, financial, education fields etc., except in the sphere of political rights. These facilities will include :
 - (a) Acquisition, holding, transfer and disposal of immovable properties in India except agricultural/plantation properties;

- (b) Admission of children in educational institutions in India under the general category quota for NRIs - including medical/engineering colleges, IITs, IIMs etc.
- (c) Various housing schemes of Life Insurance Corporation of India, State Governments and other Government agencies;

OVERSEAS CITIZENSHIP OF INDIA

A foreign national whose country of citizenship allows dual citizenship in some form or other under the local laws and who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children, are eligible for registration as Overseas Citizen of India (OCI). Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

The application form completed in all respects along with enclosures should be submitted in duplicate to the Indian Mission/Post of the country of applicant's citizenship or where he/she is not in the country of citizenship to the Indian mission/post of the country in which he/she is ordinarily resident. If the applicant is in India, he/she can apply to the Foreigners Regional Registration officer at Delhi, Mumbai, Kolkata or Amritsar or Chief Immigration Officer Chennai or to the Under Secretary, OCI Cell, Citizenship section, Foreigners Division, Ministry of Home Affairs (MHA).

Subject to Government regulations, as may be prescribed from time to time, the following benefits will accrue to OCI:

- I. A multiple entry, multi-purpose life long visa for visiting India.
- II. Exemption from registration with local police authority for any length of stay in India.
- III. Parity with Non Resident Indians (NRIs) in respect of economic, financial and educational fields except in relation to acquisition of agricultural or plantation properties.

However, OCIs shall not be entitled to the rights conferred on citizen of India under article 16 of Constitution with regard to equality of opportunity in matters of public employment, election to Constitutional offices like President/Vice President/Judges of Supreme Court or High Courts/Members of Parliament or Legislative assembly/Council or right to vote under Representation of the People Act, 1950.

Every registered OCI will be issued a registration certificate which is printed like an Indian passport in different colour and an OCI visa sticker will be pasted in the person's foreign passport. These two documents will have the photograph of the individual and all necessary security features.

A person registered as OCI is eligible to apply for grant of Indian citizenship under the Citizenship Act, 1955 if he/she is registered as OCI for five years and has been residing in India for one year out of the five years before making the application. An OCI who is granted Indian citizenship, will have to surrender his/her foreign nationality.

OCI for PIO card holders

PIO card holders who are otherwise eligible for registration as OCI will be considered for grant of registration in the same manner as other applicants. PIO card holders have to pay a fee of US \$ 25 or equivalent in local currency instead of US \$ 275 for normal applicant. PIO card holder will have to surrender his/her PIO card after knowledge of acceptance of application.

CHAPTER II

RESIDENTIAL STATUS FOR TAX PURPOSES AND CHARGEABLE INCOME

In India, as in many other countries, the charge of income-tax and the scope of taxable income varies with the factor of residence. There are two categories of taxable entities viz. (1) residents and (2) non-residents. Residents are further classified into two sub-categories (i) resident and ordinarily resident and (ii) resident but not ordinarily resident. The law prescribes two alternative technical tests of residence for individual taxpayers. Each of the two tests relate to the physical presence of the taxpayer in India in the course of the "previous year" which would be the twelve months from April 1 to March 31.

A person is said to be "resident" in India in any previous year if he --

- (a) is in India in that year for an aggregate period of 182 days or more; or
- (b) having within the four years preceding that year been in India for a period of 365 days or more, is in India in that year for an aggregate period of 60 days or more.

The above provisions are applicable to all individuals irrespective of their nationality. However, as a special concession for Indian citizens and foreign citizens of Indian

origin, the period of 60 days referred to in Clause (b) above, will be extended to 182 days in two cases: (i) where an Indian citizen leaves India in any year for employment outside India; and (ii) where an Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.

In the above context, an individual visiting India several times during the relevant "previous year" should note that judicial authorities in India have held that both the days of entry and exit are counted while calculating the number of days stay in India, irrespective of however short the time spent in India on those two days may be.

A "non-resident" is merely defined as a person who is not a "resident" i.e. one who does not satisfy either of the two prescribed tests of residence.

An individual, who is defined as Resident in a given financial year is said to be "not ordinarily resident" in any previous year if he has been a non-resident in India 9 out of the 10 preceding previous years or he has during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 729 days or less.

Till 31st March, 2003, "not ordinarily resident" was defined as a person who has not been resident in India in 9 out of 10 preceding previous years or he has not during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 730 days or more.

An analysis of the above provisions would indicate that -

1. To become a non-resident for income-tax purposes, an Indian citizen leaving India for the first time to take up employment abroad should be out of the country latest by 28th September and should not return to India before 1st April of the next year. However, in case of a person leaving India for taking up a business or profession, the criteria of 60 days will apply, as defined earlier in this Chapter.
2. An NRI individual, whose total stay in India in 4 preceding years exceeds 364 days, will not lose his non-resident status in the following year(s) if his total stay in India in that year (from April 1 to March 31) does not exceed -
 - (a) 181 days, if he is on a "visit" to India; or
 - (b) 59 days, if he comes to India on "transfer of residence".
3. An NRI who has returned to India for settlement, whose total stay in India for 4 preceding years does not exceed 364 days will not lose his non-resident status in the following year(s) if his total stay in India in such year(s) (from April 1 to March 31) does not exceed 181 days.

4. A new-comer to India would be treated as "not ordinarily resident" for the first two years of his stay in India or if treated as Non Resident in the year of arrival then for the second and third year of his stay in India. An individual (whether Indian or foreign citizen) who has left India and remains non-resident for at least nine years preceding his return to India or whose stay in 7 years preceding the year of return has not exceeded 729 days would, upon his return, be treated as "non-resident" or "not ordinarily resident" depending upon the number of days stay in India in the year of return. The status of "not ordinarily resident" will remain effective for 2 years including or following the year of return as the case may be.

Chargeable Income

As stated earlier, the charge of income-tax varies with the factor of residence in the previous year and the general position with regard to the three categories of taxpayers can be summarised as follows:

1. Taxpayers in all categories are chargeable on income, from whatever source derived, which is received or is deemed to be received in India by or on behalf of them or which accrues or arises or is deemed to accrue or arise to them in India other than income specified as exempt income.

In the above context, it may be noted that the 'receipt' of income refers to the first occasion when the recipient gets the money under his own control and it is the first receipt that determines the year and place of receipt for the purposes of taxation. If the income is already received outside India, no tax liability will arise when the whole or any part of such income is remitted to India.

2. A "resident and ordinarily resident" pays tax in India on his entire world income, wherever accrued or received.
3. A "non-resident" pays tax only on his taxable Indian income and his foreign income (earned and received outside India) is totally exempt from Indian taxes. Details of tax exemptions for NRIs/PIO on bank deposits and other investments in India are given in Chapter V herein.
4. A "not ordinarily resident" pays tax on taxable Indian income and on foreign income derived from a business controlled in or a profession set up in India.
5. An individual upon acquiring the status of "not ordinarily resident" would not pay tax, for a period of two years, on the interest on :

- (a) the continued Foreign Currency Non-Resident (FCNR) account;
- (b) the Resident Foreign Currency (RFC) account; and
- (c) on income earned from foreign sources unless such income is directly received in India or is earned from a business controlled in or a profession set up in India.

CHAPTER III

RESIDENTIAL STATUS UNDER THE FOREIGN EXCHANGE MANAGEMENT ACT 1999 (FEMA)

The residential status of an individual for exchange control purpose under FEMA is mainly linked with the intention of the person residing in or outside India. The basis of determining whether a person is resident in India or not is quite different from that under the Income-tax Act where it is based only on the number of days stay in India and a day's stay more or less can make a person resident or non-resident for tax purposes. A person who is a non-resident under the Income-tax Act may not invariably be regarded as a person resident outside India under FEMA and vice-versa. The basis of determining whether a person is resident in India or not under FEMA has also undergone certain changes as compared to provisions contained in Foreign Exchange Regulation Act, 1973 (FERA).

The definition of the term "person resident in India" under FEMA for individuals reads as under:

"persons resident in India" means -

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-
 - (A) a person who has gone out of India or who stays outside India, in either case-
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

- (B) a person who has come to or stays in India, in either case, otherwise than-
 - (a) for or on taking up employment in India, or
 - (b) for carrying on a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India;

Visits to India by NRIs/PIO on holiday, business or other personal reasons even for prolonged periods will not affect their non-resident status under FEMA as long as they have satisfied the conditions stipulated in clause (i) (A) above.

An Indian citizen who proceeds abroad for temporary business visits, medical treatment, higher studies and such other purposes which do not indicate his intention to stay outside for an indefinite period, may still be regarded as a person resident in India even if his stay in India during the preceding financial year is not more than 182 days.

RBI has clarified that students studying abroad should also be treated as NRIs under FEMA and accordingly be eligible for all investments and other benefits applicable to NRIs.

CHAPTER IV

IMPLICATIONS OF RESIDENTIAL STATUS FOR NRIs/PIO :

The complexities of determining the residential status for individual NRIs/PIO under various statutes and regulations will be obvious from the provisions outlined above and in this context it would be important to note the following :

1. The concepts and rules for determining the residential status under the income-tax laws and FEMA are quite different and it would be possible to be a resident under one law and non-resident under the other.
2. For exemption of income-tax in respect of NRE and FCNR deposits, the investor should be non-resident under FERA/FEMA.
3. For income-tax exemptions relating to Non-Resident Non-Repatriable (NRNR) deposits, National Savings Certificates and other notified Government Securities and Bonds, the investor should be non-resident as per the income-tax definition.
4. For income-tax exemption relating to Resident Foreign Currency (RFC) accounts and continuing FCNR deposits in case of returning NRIs, the investor could even be a resident but not ordinarily resident as per the income-tax definition.
5. The special tax rate concessions on income and long-term capital gains on specified assets, purchased in convertible foreign exchange are available only to non-residents under the Income-tax Act.

CHAPTER V

TAX PLANNING

Some of the special tax concessions for NRIs/PIO investing in India were first introduced in the Finance Act, 1983, which became effective on June 1, 1983. The tax provisions were further liberalised by subsequent Finance Acts and other amending laws.

Special concessions

Investment income from 'foreign exchange assets' comprising shares and debentures of and deposits with Indian companies and central government securities, subscribed to or purchased in convertible foreign exchange, is charged to income-tax at a flat

rate of 20%. No deductions are, however, allowed and tax is levied on gross income. The basic exemption, below which income is not taxed in India, is also not allowed. Under these special concessions a reduced rate of 10% is applied to the long term capital gains on transfer of any foreign exchange asset held by the NRI/PIO. In order to qualify for long-term capital gains, the minimum holding period for shares held in a company or any other security listed in a recognised Stock Exchange in India or units of Unit Trust of India or of a specified Mutual Fund is a period of more than 12 months and for other assets it is a period of more than 36 months. Long-term capital gains on foreign exchange assets are, however, exempted from tax if the net proceeds realised on transfer are re-invested, within six months of such transfer, in any specified securities and the new assets are retained for atleast three years.

The Finance Act, 2003 has withdrawn the taxing provision in respect of dividend received by the shareholders on shares held in Indian Companies. Accordingly, dividend received by the shareholders of Indian Companies will be exempt from tax. The income received from units of Unit Trust of India and of specified mutual funds will also be exempt.

Finance Act, 2004 has:

- (a) granted tax exemption as regards long term capital gains arising from transfer of equity shares in a Company and/or units of equity oriented schemes of Mutual Funds, which are subject to securities transaction tax; and
- (b) fixed at 10% the tax on short term capital gains arising from such shares and/or units, which has subsequently been raised to 15%.

The tax concessions in respect of investment income (and not long term capital gain) will continue to apply even after the NRI/PIO returns to India but such exemption would be available only in respect of foreign exchange assets other than shares in Indian companies and the exemption will continue until such time as the assets are transferred or converted into money. However, as dividend is exempt income from 1st April 2003, exclusion of shares from said provision is redundant.

In the circumstances where the income of NRI/PIO from such foreign exchange assets is below the taxable limit or the average level of tax is below 20%, he may elect not to be governed by the special tax concessions referred to above. He would then have to furnish a Return of Income in the normal course together with a declaration of such election and he would be entitled to claim a refund of the whole or a part of the tax deducted at source, as may be appropriate.

As mentioned above, short term capital gains arising from transfer of equity shares and/or units of equity oriented schemes of Mutual Funds, which are subject to securities transaction tax, are currently taxed at 15%. Other Short-term capital gain

is taxable at normal slab rates as applicable to residents, and the return of income has to be filed by the NRI/PIO making such gain. Capital gain from transfer of shares or debentures of Indian companies will be computed by converting the cost of acquisition, expenses incurred in connection with such transfer and the sale price of the capital asset into the same foreign currency as was initially used in the purchase of these assets and the capital gain so computed in such foreign currency will be reconverted into Indian currency. This computation effectively gives the NRI/PIO the benefit of claiming exchange loss, if any, on all capital gains arising from sale of shares or debentures of Indian companies, whether these are long term or short term. It may be noted that the aforesaid benefit is available only if the investment is made from convertible foreign exchange or by using funds held in Non-Resident External Account. In respect of investment made from funds other than convertible foreign exchange, and if the asset is a long term capital asset the benefit of indexation can be availed. However, indexation is not available in respect of debentures and bonds.

It may be worthwhile to note that this method of computation used to give NRI/PIO benefit of claiming exchange loss in earlier days. However, in the last couple of years, NRIs are at a disadvantage of paying more tax on account of strengthening of Rupee.

Tax exemptions

Income-tax:

Income from the following investments made by NRIs/PIO is totally exempt from tax:

- (a) Deposits in under mentioned bank accounts -
 - (i) Non-resident External Rupee Account (NRE)
 - (ii) Foreign Currency Non-resident Account (FCNR)
- (b) Units of Unit Trust of India and specified mutual funds, other specified securities, bonds and savings certificates (subject to conditions prescribed under the Income-tax laws and regulations) invested out of convertible foreign exchange.
- (c) Dividend declared by Indian Company.
- (d) Long term capital gains arising from transfer of equity shares in a Company and/or equity oriented schemes of Mutual Funds, which are subject to securities transaction tax.

It should be noted that the tax exemptions relating to NRE bank deposits will cease immediately upon the NRI/PIO becoming a resident in India under FEMA whereas the

interest on FCNR bank deposits will continue to be tax free as long as the NRI maintains the status of Non Resident or Resident but Not Ordinarily Resident or until maturity, whichever is earlier.

Wealth-tax:

Where an NRI/PIO returns to India for permanent residence, moneys and the value of assets brought by him into India and the value of assets acquired by him out of such moneys within one year immediately preceding the date of his return and at any time thereafter are totally exempt from Wealth-tax for a period of seven years after return to India.

The above exemption may not have much relevance now since the Finance Act 1992 has considerably reduced the scope of Wealth-tax. With effect from 1st April, 1993, Wealth-tax is being levied only on non-productive assets like urban land, residential buildings (except one house property or a plot of land admeasuring less than 500sq.mts.), jewellery, bullion, vehicles, cash over Rs.50,000/- etc. The current rate of Wealth-tax is 1% on the aggregate market value of chargeable assets as on 31st March every year in excess of Rs.3.0 million. Rented house properties as also non-residential properties are not subject to wealth tax..

However, it may be noted that NRIs are also liable to pay wealth tax if the market value of taxable assets as on 31st March exceeds Rs.3.0 million.

Gift-tax:

Gift Tax Act, 1958 has been repealed with effect from 1st October, 1998 and as such, Gift Tax is not chargeable on any gifts made on or after that date.

With regard to gifts of foreign exchange or specified assets made by NRIs to their relatives in India, it should be noted that -

1. Gifts made by an NRI/PIO to his or her spouse, minor children or son's wife will involve clubbing of income and wealth in the hands of the donor-NRI/PIO.
2. In the case of gifts to minor children the clubbing of income, as above, will cease upon such children attaining the age of 18 years.
3. The clubbing provisions will apply, in case of gift to spouse or son's wife in India, only to the first-stage of income from the original gift. Second-stage income arising from investment of the income from the original gift is not clubbed and this will constitute the separate wealth/income of the donee spouse.

Other matters to be noted regarding gifts are :

1. All gifts received by residents from NRIs/PIO may be subject to the tax authorities requiring the recipient to provide evidence as regards the identity and financial capacity of the donor and genuineness of the gift.
2. Under the Foreign Exchange Management Act, 1999 no approval from Reserve Bank of India (RBI) is necessary for the resident donee to hold gifted immovable property outside India provided the said property is gifted by a person resident outside India. General permission, subject to certain conditions, is granted by RBI for the resident donees to hold foreign moveable properties such as shares and securities gifted by NRI/PIO donors.
3. The Income Tax Act has provided that any sum of money, any immovable property; any property other than immovable property exceeding in the aggregate of Rs.50,000 received without consideration (i.e., gift) by an individual from any person or persons, the whole of such sum will be chargeable to income-tax in the assessment of recipient (i.e., donee) under the head "Income from other sources". as under :-
 - In respect of a sum of money the aggregate value of which exceeds Rs.50,000, the whole of the aggregate value
 - In respect of immovable property the stamp duty value of which exceeds Rs 50,000 the stamp duty value of such property;
 - In respect of any other property (other than immovable property), without consideration the aggregate fair market value (FMV) of which exceeds Rs. 50,000 , the whole of the aggregate FMV of property; for a consideration which is less than the FMV of the property by an amount exceeding Rs. 50,000/- the aggregate FMV of such property as exceeds such a consideration;

However, the above provisions will not apply to any sum of money (gift) received -

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer; or
- (e) from any local authority; or

- (f) from any specified fund or foundation or other educational institution or hospital or other medical institution or trust or institution. .

The term "relative" is defined as:

- (1) spouse of the individual;
- (2) brother or sister of the individual;
- (3) brother or sister of the spouse of the individual;
- (4) brother or sister of either of the parents of the individual;
- (5) any lineal ascendant or descendant of the individual;
- (6) any lineal ascendant or descendant of the spouse of the individual; and
- (7) spouse of the person referred to in (2) to (6).

The term property is defined to mean the following capital assets of the assessee namely :

- (i) immovable property being land or building or both;
- (ii) shares and securities;
- (iii) jewellery
- (iv) archaeological collections;
- (v) drawings;
- (vi) painting;
- (vii) sculptures
- (viii) any work of art
- (ix) bullion.

Advance Rulings

The Finance Act, 1993 has introduced, with effect from 1st June 1993, a new scheme of providing advance rulings on tax matters.

The relevant provisions of this scheme, in the Income-tax Act, are as under:

1. "advance ruling" inter alia means -
 - (a) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or
 - (b) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident, and such determination shall include the determination of any question of law or of fact specified in the application.
2. The Authority for Advance Rulings, located in Delhi, shall consist of the following Members, appointed by the Central government :
 - (a) A retired Judge of the Supreme Court as Chairman.
 - (b) An officer of the Indian Revenue Service who is qualified to be a member of the Central Board of Direct Taxes.
 - (c) An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.
3. The application, for obtaining an advance ruling, has to be made in the prescribed form in quadruplicate accompanied by the prescribed fee and it can be withdrawn within 30 days from the date of the application.
4. The Authority may, after examining the application and the records called for, either allow or reject the application. Provided that the application will not be allowed by the Authority where the question raised :
 - (a) is already pending in the applicant's case before any income-tax authority, the Appellate Tribunal or any Court;
 - (b) involves determination of fair market value of any property;
 - (c) relates to a transaction or issue which is designed prima facie for the avoidance of income-tax.

5. No application can be rejected without giving an opportunity to the applicant of being heard, either in person or through a duly authorized representative. Also, where the application is rejected, reasons for such rejection have to be stated in the order made by the Authority.
6. The advance ruling shall be pronounced by the Authority in writing within six months of receipt of the application and a copy thereof, duly signed by the Members and certified in the prescribed manner, shall be sent to the applicant and to the Commissioner of Income-tax having jurisdiction over the case.
7. The advance ruling will be binding on the applicant as well as on the concerned income-tax authorities, only in respect of the specific transaction in relation to which the ruling is sought. The ruling will remain binding unless there is a change in law or facts on the basis of which the ruling has been given.
8. Once the subject matter of the application is rejected or decided against the applicant, there is no provision for appeal. However, in the matter involving gross mistakes/mis-application, the applicant may either file a writ petition to the High Court or a Special Leave Petition with the Supreme Court of India.
9. The Authority is empowered to declare the advance ruling void, on grounds of fraud or misrepresentation of facts by the applicant.

While it must be remembered that the advance ruling has no direct general applicability and is binding only in the case of the particular applicant, it may have considerable value as a persuasive precedent for other concerned individuals.

CHAPTER VI

INVESTMENT INCENTIVES

The Foreign Exchange Management Act, 1999 (FEMA) repealing the Foreign Exchange Regulations Act, 1973 (FERA) has come into effect on 1st June 2000. In this context, the RBI has issued various regulations/notifications under the relevant provisions of FEMA including the power to grant approvals which has been assigned from RBI to the authorised dealers/bankers subject to the conditions prescribed in such regulations/notifications. Only when such conditions are not fulfilled, prior RBI approval will be necessary.

Repatriable Investments

- A. NRIs/PIO can invest with full repatriation benefits in the new issue of equity shares or convertible debentures of an Indian company under the automatic route of RBI. However, investment in certain notified sectors is prohibited and in certain cases investment is subject to prior approval of the Foreign Investment Promotion Board (FIPB)/Secretariat for Industrial Assistance (SIA).

In respect of Companies where no prior approval from RBI is to be obtained, investment upto 100% of the new issue of equity shares/compulsory convertible debentures/compulsory convertible preference shares is permissible. However, RBI has prescribed sectoral caps and other conditions in respect of investment by NRIs/PIO in companies engaged in certain specified activities.

NRIs/PIO can also make investments, upto the prescribed ceilings, in an Export Oriented Unit (EOU) or a unit in Free Trade Zone (FTZ) or in a Software Technology Park or in an Electronic Hardware Technology Park.

Indian companies seeking investment from NRIs/PIO under the automatic route of RBI are required to file a declaration in the prescribed form together with required documents with the concerned Authorised dealer receiving the said remittance within 30 days from the date of issue of shares/convertible debentures along with the KYC certificate to be obtained from receiving bank. In addition to this, within 30 days of receipt of funds certain particulars are required to be filed with RBI prior to allotment of shares.

The Government of India has clarified that non-convertible preference shares shall be considered as External commercial borrowing (ECB) and all the conditions applicable to ECBs will be applicable to issue of such preference shares.

B. Investment in Trading Sector

NRIs/PIO are permitted to invest upto 100% in equity shares/convertible debentures / convertible preference shares of an Indian Company engaged in wholesale cash / carry trading activity under the automatic route of the Reserve Bank of India subject to certain conditions. Investment in companies carrying on retail trading is prohibited. However, foreign direct investment in companies carrying on single brand retailing activity is permitted upto 51% with the prior approval of the FIPB.

C. Real Estate Development

RBI has given permission to NRIs/PIO to invest on a repatriable basis upto 100% in the equity shares/convertible debentures / convertible preference shares issued by an existing or new company engaged or proposing to engage in real estate development activities in respect of specified approved projects.

In addition to repatriation of the original investment, annual dividend on equity shares / interest on debentures and capital gains can also be freely repatriated, subject to payment of applicable taxes.

D. Investment in Non-Convertible Debentures

RBI has granted general permission to Indian companies to make public issue of non-convertible debentures (NCDs) to NRIs/PIO on repatriation basis subject to compliance of certain notified conditions.

In case, the said conditions are not fulfilled, the Indian companies desiring to issue non-convertible debentures to NRIs/PIO should submit their applications in the prescribed form to the Central Office of RBI for necessary permission. Such applications are considered by RBI on merits.

E. Investments in Domestic Mutual Funds

RBI has granted general permission to domestic Mutual Funds (as specified in the Income Tax Act) to issue units or any other similar instrument under the schemes floated by them with the approval of Securities and Exchange Board of India, where required, to NRIs/PIO on repatriation basis subject to the following conditions:

- (a) The investment should be made by the eligible non-resident investors out of funds remitted from abroad in free foreign exchange through normal banking channels or out of balances held in their NRE/FCNR accounts maintained with authorised dealers in India.
- (b) The maturity proceeds/repurchase value of units issued on repatriation basis, dividend or income earned thereon, net of applicable taxes, may be credited to NRE/FCNR account of the non-resident investor or remitted to the non-resident investor if the investment was made out of inward remittance or from the funds held in NRE/FCNR account of the investor. There is no objection to credit of such proceeds to NRO account of the investor, if he so desires.

F. Investment in Bonds issued by Public Sector Undertakings (PSUs)

NRIs/PIO may, without limit, purchase on a repatriation basis bonds issued by PSUs in India.

G. Investment in shares of Public Sector Enterprises (PSEs)

RBI has granted general permission to NRIs/PIO to purchase on repatriation basis, without limit, equity shares / convertible debentures / convertible preference shares in PSEs disinvested by Government of India, subject to the conditions that:

- (a) the purchase is in accordance with the terms and conditions stipulated in the notice inviting the bids;
- (b) the purchase consideration/bid money is paid either by inward remittance or out of funds held in NRE/FCNR account of the investor.

H. Portfolio Investment Scheme

Under this scheme NRIs/PIO are permitted to invest in shares/convertible debentures of Indian companies through a registered stock broker on a recognised stock exchange in India. Payment for purchase of such shares/debentures should be made by inward remittance in foreign exchange through normal banking channels or out of funds held in NRE/FCNR account maintained by the investor in India.

The investment under the aforesaid scheme by NRIs/PIO can be made by designating a branch of an authorised dealer and routing the transactions through such branch by making an application to the authorised dealer. There is an overall ceiling of 5% of paid up share capital/paid up value of each series of convertible debentures of the Indian company, purchased by each NRI/PIO and 10% ceiling on such purchase of shares/convertible debentures by all NRIs/PIO put together. This ceiling of 10% can be raised to 24% if a special resolution is passed to that effect in the general meeting of the concerned Indian company.

NRIs are also permitted to invest in exchange traded derivatives contracts approved by the SEBI from time to time out of INR funds held in India on a non-repatriation basis subject to limits as prescribed by SEBI.

I. **Company Deposits**

RBI, vide its Circular dated 24th April, 2004, has imposed a restriction on any company in India to accept deposits from NRIs/PIO, on repatriation basis. Further the RBI has imposed restriction to accept public deposit on a non-repatriation basis, if the same is generated out of foreign exchange remittance from abroad or out of their NRE or FCNR accounts.

Such deposits out of balance in NRO account are permitted provided that the balance does not represent foreign exchange inward remittance or transfer from NRE or FCNR account.

The concerned entities can, however, continue to hold and renew existing deposits held in the name of NRIs/PIO on a repatriation basis as well as non-repatriation basis subject to certain conditions.

J. **Sale/Transfer of Shares/Securities**

RBI has granted general permission for sale/transfer of shares, bonds or debentures of Indian companies (acquired on repatriation basis) by NRIs/PIO from stock exchanges through a registered broker at the ruling market price or for transfer by way of sale or gift of the shares or convertible debentures to another non-resident Indian only, provided the transferor had purchased/acquired such shares/bonds/debentures under the general/special permission of RBI.

It will also be in order for authorised dealer to allow remittance of net sale proceeds of such shares sold by NRIs/PIO, subject to the following conditions:

- (i) The shares are sold on stock exchange and broker's contract note showing the sale price is produced.
- (ii) A documentary evidence is produced to show that the original investment was permitted on repatriation basis specifically by RBI or was under the general permission granted by RBI and was made out of funds remitted from abroad or out of funds held in NRE/FCNR account of the non-resident investor.
- (iii) RBI has clarified that remittance of the sale proceeds can be made on submission of an appropriate certificate from a chartered accountant and an undertaking from the remitter.

Net sale proceeds (after payment of applicable taxes) in respect of shares issued to non-resident investors on non-repatriation basis should be credited to NRO account of the seller.

In the case of shares/debentures/bonds acquired by non-resident investors under the Portfolio Investment Scheme, general exemption has been granted for transfer through stock exchanges provided the sale is arranged through the same designated branch through whom they were purchased. In other cases, application for necessary permission is required to be made to RBI in the prescribed form.

RBI has granted general permission to NRIs/PIO to transfer shares or convertible debentures of Indian companies by way of sale to other NRIs/PIO only.

RBI has vide a Circular dated 4th October, 2004, granted general permission for transfer of shares of any company (other than companies engaged in finance service sector such as NBFC, Banks, Insurance etc) from a resident investor to a non-resident or from a non-resident to a resident by way of private arrangement on an application to be made by the transferor/transferee to the authorized dealer and provided the company whose shares are being transferred is not falling in specified categories.

Transfer of shares by way of gift from a person resident in India to a person resident outside India will require prior approval of the RBI and provided certain conditions are satisfied. One of the condition was that value of the security to be transferred should not exceed Rs 25,000 per calendar year. The RBI has recently enhanced this limit to USD 50,000 per financial year.

Non-Repatriable Investments

A. New issues of shares/convertible debentures

Indian companies have been granted general permission to accept investments from NRIs/PIO, on non-repatriation basis, in new or rights issues of shares or convertible debentures, upto 100 per cent, provided the investee company does not carry on agricultural, plantation activities or construction of farm houses or real estate business (excluding real estate development i.e. development of property and construction of houses) or deal in transferable development rights or is a Chit Fund or Nidhi company. However, investment by NRIs in companies engaged in retailing activity (other than single brand retailing) even on a non-repatriation basis is not permitted.

B. Investment in Domestic Mutual Funds

RBI has granted general permission to domestic Mutual Funds (as specified in the Income Tax Act) to issue units or any other similar instrument under the schemes floated by them with the approval of Securities and Exchange Board of India, where required, to NRIs/PIO on non-repatriation basis subject to the following conditions:

- (a) The funds for investment should be provided by eligible non-resident investors by way of inward remittance or by debit to their NRE/FCNR/NRO accounts maintained with authorised dealers in India.
- (b) In cases where the investment is made out of inward remittance or from funds held in NRE/FCNR/NRO accounts of the investor, the maturity proceeds/repurchase price of units and/or dividend or income earned may be credited to NRO account of the non-resident investor maintained with an authorised dealer in India.

C. Proprietary/partnership concerns

RBI has granted general permission to NRIs/PIO to make investments in the capital of proprietary/partnership concerns in India, on non-repatriation basis, without any limit provided such concern is not engaged in any agricultural/plantation activity or real estate business.

D. Portfolio Investment Scheme

NRIs/PIO may invest in a Portfolio Investment Scheme on a non-repatriation basis in a similar manner as explained earlier in this Chapter under "Repatriable Investments".

E. Other investments

NRIs/PIO are also permitted, subject to prior approval of/intimation to the concerned Government Authorities, to make the following investments, on non-repatriation basis:

- Non-convertible debentures of Indian companies under a public offer (general permission);
- Exchange-traded derivatives (subject to limits prescribed by SEBI);
- Existing shares/debentures of Indian companies by private arrangement (general permission subject to certain conditions); and

- Domestic public/private sector Mutual Funds or Money Market Mutual Funds floated by commercial banks and public/private sector financial institutions, dated government securities (other than bearer securities), treasury bills and National Plan/Savings Certificates.

F. Remittance of income on non-repatriable investments

The entire net current income of NRIs/PIO (after payment of tax) including interest and dividends from investments held on non-repatriation basis, rent, pension etc. will be eligible for repatriation. NRIs/PIO seeking remittance of such income should designate a branch of an authorised dealer through whom the remittance is to be made and make an application to such designated branch, as and when desired, giving details of income earned along with a Chartered Accountant's Certificate, personal undertaking and other requisite documents in the prescribed form. After scrutinising the application with reference to the particulars/ documents furnished to ensure that the net income (after payment of tax) is eligible for repatriation, the designated branch will allow remittance of the relevant funds held in the applicant's NRO account or credit the same to the NRE/FCNR account of the applicant.

RBI has also permitted authorised dealers to remit current income of NRIs/PIO who do not maintain NRO account and have no taxable income, based on a simple declaration to be submitted by them. NRIs/PIO in such cases need not submit certificate of a Chartered Accountant.

OCBs were also permitted to repatriate income from non-repatriable investments. However, in view of the de-recognition of OCBs with effect from 16th September 2003 (see Chapter I) repatriation of their income from non-repatriable investment will require specific approval of RBI through the Authorised Dealers of the OCBs, which will be granted on a case to case basis.

G. Repatriation of balance in NRO Account

The current regulations under FEMA now provide the following :

- i. Balance held in NRO account can be repatriated/remitted upto US Dollars One Million per financial year.
- ii. Balance representing sale proceeds of immovable property; inherited property; deposits with bank, company or a firm; Public Provident Fund (PPF) Account; Insurance policies; sale proceeds of shares and securities

and any other assets held in India in accordance with the provisions of FEMA or applicable law i.e. FERA, is eligible for repatriation.

- iii. Such funds can be remitted for any bonafide purpose, subject to the NRO account holder providing :
 - (a) an undertaking in the prescribed form;
 - (b) Chartered Accountant's Certificate regarding tax compliance; and
 - (c) documentary evidence as regards eligibility.

CHAPTER VII

INVESTMENT IN IMMOVABLE PROPERTY

NRIs, including foreign citizens of Indian origin, have been permitted by RBI to acquire residential or commercial properties in India. There is no limit on the number of properties that may be acquired. Such acquisition is subject to certain conditions, which are dealt with hereunder.

For the purpose of investment in immovable property, a foreign citizen is regarded as a person of Indian origin if he/she -

- (i) at any time, held an Indian Passport; or
- (ii) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of Constitution of India or the Citizenship Act 1955; or
- (iii) He/she is a spouse of an Indian citizen or a person of Indian origin.

Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan are not considered as persons of Indian origin and are not permitted to acquire or transfer immovable property in India, other than lease, not exceeding five years, without prior permission of RBI.

Acquisition and Transfer of Property in India by an Indian Citizen Resident outside India

A person resident outside India who is a citizen of India may acquire any immovable property in India, other than agricultural land/plantation property/farm house by purchase out of funds received in India by way of inward remittance from any place outside India or funds held in any non-resident account maintained in accordance

with the provisions of FEMA and the regulations made thereunder. Such a person is also permitted to transfer any immovable property in India to a person resident in India. He is also permitted to transfer any immovable property other than agricultural land or plantation property or farmhouse to a person resident outside India who is either a citizen of India or a person of Indian origin. For such acquisition or transfers, there is a general permission from RBI.

Agricultural land can be acquired only by way of inheritance or family partition. Land held as a resident before settlement abroad can be continued to be held. Such land can be sold or gifted only to a resident of India.

Acquisition and transfer of property in India by a Person of Indian Origin

A person of Indian origin resident outside India is permitted to acquire immovable property in India -

- (i) other than agricultural land/farm house/plantation property by purchase out of funds received in India by way of inward remittance from any place outside India or funds held in any non-resident account maintained in accordance with the provisions of FEMA and the Regulations made thereunder;
- (ii) other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is either a citizen of India or a person of Indian origin;
- (iii) by way of inheritance (a) from a person resident in India or (b) from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of FEMA.

A person of Indian origin resident outside India may transfer -

- (i) any immovable property in India, other than agricultural land/farm house/plantation property, by way of sale to a person resident in India;
- (ii) agricultural land/farm house/plantation property in India, by way of gift or sale to a person resident in India who is a citizen of India;
- (iii) residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India.

The acquisition/transfer of property, as aforesaid, does not require any approval of RBI.

Acquisition of Immovable Property by a Branch or Office of a Foreign Entity

A branch or office in India of a foreign entity other than a liaison office has been permitted to acquire immovable property in India, which is necessary for or incidental to the activity carried on by the branch or office subject to compliance with the applicable laws, rules, regulations or directions for the time being in force and filing with RBI a declaration in the prescribed form within ninety days from the date of such acquisition. The property so acquired can also be mortgaged to an authorised dealer as a security for any borrowing by such branch or office.

Repatriation of sale proceeds

In respect of sale of immovable property other than agricultural land/farm house/plantation property in India by a person resident outside India who is citizen of India or a person of Indian origin, the authorised dealer may allow repatriation of the sale proceeds outside India provided the following conditions are fulfilled:-

- (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 or the provisions of FEMA;
- (ii) The amount to be repatriated does not exceed -
 - (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in FCNR account; or
 - (b) the foreign currency equivalent, as on the date of payment, of the amount paid from the funds held in NRE account for acquisition of the property;
- (iii) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

The sale proceeds of immovable property acquired, held or owned by any person when he was resident in India or inherited from a person who was resident in India cannot be repatriated outside India, by such person or his successor, except with the prior permission of RBI. However, RBI has granted general permission to NRIs/PIO to repatriate upto US\$1,000,000 per financial year out of sale proceeds of any immovable property acquired by way of inheritance or succession by making application to the authorised dealers along with the following documents:

- (i) Documentary evidence as regards the inherited property

- (ii) An undertaking by the applicant in the prescribed form.
- (iii) Certificate of Chartered Accountant regarding tax compliance.

In case the repatriation is to be made in more than one installment, all installments should be repatriated through the same authorised dealer.

Letting out Immovable Property

NRIs/PIO can freely rent out their immovable property in India. No prior permission from RBI is required and rental income is freely repatriable.

Taxation

There are no special tax concessions available to NRIs/PIO with regard to immovable properties in India. The provisions relating to tax on income, wealth and capital gains will apply in respect of such properties in the normal course, subject to exemptions, deductions as in case of resident Indians.

CHAPTER VIII

LOANS AND ADVANCES

Some of the relevant concessions and regulations for loan facilities available to NRIs/PIO are summarised hereunder :

A. Loans and Advances against bank deposits

1. Banks are permitted to grant loans/overdrafts in Indian Rupees to NRIs/PIO on repatriation or non-repatriation basis, without any ceiling and without any reference to RBI, against the security of their NRE/FCNR deposits -
 - (a) for personal purposes or for carrying on business activities other than re-lending or agricultural/plantation activities or investment in real estate business, provided that the advances are fully secured by the fixed deposits and the conditions relating to margin, interest rate etc. are complied with;
 - (b) for the purpose of making direct investment in India on non-repatriation basis in the capital of Indian firms and companies, provided the conditions as mentioned in chapter VI relating to non-repatriable investments are complied with;

- (c) for acquiring residential house/flat in India, subject to certain conditions as specified hereafter.
2. Loans/overdrafts availed on the security of NRE/FCNR deposits can be repaid by -
- (a) remittance from abroad through normal banking channel;
 - (b) adjustment/appropriation of the deposit itself;
 - (c) by transfer from NRE/FCNR or NRO account of the borrower.
3. RBI has permitted authorised dealers to grant foreign currency loans in India, , against security of funds held in FCNR deposit accounts to account holders only subject to certain guidelines

B. Housing Loans

Housing financial institutions in India (approved by the National Housing Bank) and commercial banks (authorised dealers) are permitted to grant loans to NRIs/PIO for acquisition of flats/houses for residential purposes subject to the same terms and conditions in respect of quantum, purpose, margin money, period of repayment etc., as applicable to housing loans granted to residents. Payment of margin money and repayment of the loan installments including interest can be made by direct remittance from abroad or out of funds in NRE/FCNR/NRO account of the borrower or out of rental income of the property acquired by utilisation of the loan. The repayment of the loan could also be made by any relative of the borrower in India by crediting the borrower's loan account through the bank account of such relative.

The loan amount will not be credited to the NRE/FCNR account of the borrower. The loan shall be fully secured by equitable mortgage of the property proposed to be acquired and, if necessary, also by lien on the borrower's other assets in India. The rate of interest on the loan shall be in accordance with the directives issued by the RBI or by the National Housing Bank, as the case may be.

C. Loans/Overdrafts to Third Parties

Authorised dealers in India can grant loans/overdrafts to third parties (residents in India) against the collateral of NRE/FCNR deposits, held by NRIs/PIO, without any ceiling, subject to the following terms and conditions:

- (a) There should not be any direct or indirect foreign exchange consideration for the NRI/PIO depositor agreeing to pledge his fixed deposits.
- (b) The conditions relating to margin, interest rate, purpose of loan etc. as stipulated by RBI from time to time shall be complied with.
- (c) The loan should be utilised for personal purpose or for carrying on business activities other than agriculture and plantation activities or real estate business. The loan should not be utilised for re-lending.
- (d) The loan amount should not exceed Rs. 20 lakhs.

D. Loans to NRIs/PIO by Authorised Dealers

Authorised dealers may grant loans and overdrafts to NRIs/PIO against the security of shares/debentures and immovable property held by them in India, according to their commercial judgement. This is subject to the following:

- (a) Shares/securities are held in the name of the concerned NRI/PIO with the general or special permission of RBI.
- (b) In the case of loan against security of immovable properties (other than agricultural/ plantation or farm house), the properties should have been acquired with the general or special permission of RBI.
- (c) The loan is utilised for meeting the borrower's personal requirements and/or for his own business purposes and shall not be utilised, either singly or in association with other person(s) for any of the activities in which investment by persons resident outside India is prohibited namely:
 - The business of chit fund, or
 - Nidhi Company, or
 - Agricultural or plantation activities or in real estate business (not being development of township, construction of residential premises, roads, or bridges) or construction of farmhouse, or
 - Trading in Transferable Development Rights (TDRs)

- (d) The RBI's directives on advances against shares/securities/immovable property shall be duly complied with.
- (e) The loan amount is retained in India and not remitted abroad. The loan amount should not be credited to NRE/FCNR account of the non-resident borrower.
- (f) The repayment of the loan is made by way of remittances from abroad through normal banking channel or by debit to the NRE/FCNR account of the borrower or out of the sale proceeds of the shares/securities/immovable property against which such loan is granted. RBI has recently permitted such loans to be repaid by resident close relative (relative as defined in Section 6 of the Companies Act, 1956), of the Non-Resident Indian.

The RBI has now permitted the authorised dealers to grant loans to NRIs/PIO for any purpose as per the loan policy laid down by the authorised dealer subject to the same conditions as stated in paras (a) to (f) above and subject to the further condition that the said amount shall not be used for investment in capital markets including margin and derivatives. RBI has also permitted authorized dealers to grant rupee loan to NRI employees of Indian companies for acquiring shares of the companies under the Employee Stock Option Plan (ESOP) Scheme subject to certain conditions.

E. Loans to NRIs/PIO outside India

Banks are permitted to arrange through their overseas branches and correspondents any type of fund-based and/or non fund-based facilities to, or in favour of non-resident depositors or to third parties at the request of the depositors for bonafide purposes against the security of funds held in NRE/FCNR accounts in India.

F. Loan to NRIs by person resident in India

RBI has permitted resident individual to lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to the following conditions:

- (i) the loan is free of interest and the minimum maturity of the loan is one year;
- (ii) the loan amount should be within the overall limit under the Liberalised Remittance Scheme of USD 200,000 per financial year available for a resident individual;

- (iii) the loan shall be utilised for meeting the NRI/PIO'S personal requirements or for his own business purposes in India;
- (iv) the loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely;
 - (a) the business of chit fund, or;
 - (b) Nidhi Company, or;
 - (c) agricultural or plantation activities or in real estate business, or construction of farm houses, or;
 - (d) trading in Transferable Development Rights (TDRs).
- (v) the loan amount should be credited to the NRO account of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO Account.
- (vi) the loan amount shall not be remitted outside India; and
- (vii) repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO) / Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the NRI/PIO or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted

**G. Loans to Resident Individuals/Proprietorship Concerns/
Partnership Firms**

Resident individuals/proprietorship concerns/partnership firms may avail of interest bearing loans from NRIs/PIO on non-repatriation basis subject to the following conditions :

- (a) The loan amount should be received by remittance from abroad through normal banking channels or by debit to the lender's NRE/FCNR/NRO account with an authorised dealer or an authorised bank in India.
- (b) The rate of interest on such loans should not exceed two percentage points over the Bank rate prevailing on the date of granting the loan.
- (c) The maturity period of the loan should not exceed 3 years.
- (d) In case where the amount of loan was received by way of remittance from abroad through normal banking channels or out of funds held in the non-resident lender's NRE/FCNR/NRO account maintained with a

bank in India, payment of interest/repayment of loan should be made by credit to NRO account of the lender with a bank in India.

- (e) The amount of loan will not be allowed to be repatriated abroad.
- (f) The amount of loan shall be used for the purpose of borrower's business other than for the business of chit fund, or a Nidhi Company or agricultural or plantation activities or real estate business (not being development of township, construction of residential/commercial premises, roads or bridges) or construction of farmhouse or trading in TDRs. Such funds shall not be used for any investment, whether by way of capital or otherwise in any company, partnership firm or proprietary concern or any other entity, whether incorporated or not, or for re-lending.

H. Loans to Residents against guarantees

Loans/overdrafts can be granted to residents against guarantees given by non-residents. On invoking the guarantee, the non-resident will be required to make the payment of the guaranteed amount. RBI has granted general permission to make such payment from remittance of funds or from rupee balances in India or by debit to his FCNR/NRE account in India. RBI has granted general permission to the resident, being the principal debtor, to make the payment to the non-resident who has met his liability under the guarantee. The NRI, on recovery of the enforced claim from the resident, may seek repatriation of the amount if the liability was discharged by the non-resident from his NRE/FCNR account or by way of inward remittance from abroad.

I. Loans to Residents from NRI close relatives on repatriation basis

An amount not exceeding US\$250,000 or its equivalent in foreign exchange can be borrowed by an individual resident in India from his close relative (as defined in the Companies Act, 1956) resident outside India, subject to the conditions that -

- (a) the loan is free of interest;
- (b) the minimum maturity period of the loan is one year;
- (c) the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender;

General Observations

Residents in India availing loans from NRIs/PIO on non-repatriation or repatriation basis, which do not fall within the above criteria, should make an application to RBI for prior approval giving full details such as name/address of lender, loan amount, rate of interest, purpose, period of loan, repayment schedule etc.

CHAPTER IX

IMPORT OF GOLD AND SILVER

NRIs/PIO coming to India after having stayed outside India continuously for a period of not less than six months can import into India a maximum of 10 kgs. of gold and 100 kgs. of silver.

Gold and silver, in any form (other than ornaments studded with precious stones and pearls), can be imported subject to a customs duty payable in convertible foreign exchange as under:

1. Gold bars other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units and gold coins - Rs.300/- per 10 grams.
2. Gold in any form, other than as stated above, including tola bars and ornaments, but excluding ornaments studded with stones or pearls - Rs. 750/- per 10 grams.
3. Silver - Rs.1,500/- per kg.

In addition to the above mentioned customs duty, appropriate education cess (percentage of the duty as prescribed) will have to be paid.

NRI/PIO can bring the gold/silver himself at the time of arrival in India or import the same within 15 days of his arrival. NRI/PIO can also obtain the permitted quantity of gold/silver from customs bonded warehouse of State Bank of India or Metals & Minerals Trading Corporation, subject to certain conditions. NRI/PIO is required to file a declaration in the prescribed form before the customs officer at the time of arrival in India stating his intention to obtain the gold/silver from the customs bonded warehouse and pay the duty before clearance.

Imported gold/silver can be sold to residents in India against payment in rupees which should be credited to the NRO account of the seller. It should, however, be noted that once the gold or silver is brought into India and it is sold, the profit on such sale will attract income-tax and/or capital gains tax, as may be appropriate. If the gold or silver is not sold but retained, it may be liable to wealth-tax. Octroi duty/sales-tax may also be payable, as per the applicable local authority regulations.

CHAPTER X

RETURNING INDIANS

The RBI has virtually removed all controls over foreign assets of NRIs/PIO returning to India for permanent settlement (Returning Indians). NRIs/PIO who return to India are permitted to retain their foreign currency funds/assets abroad provided such funds/assets were acquired lawfully during the NRI/PIO's stay abroad. A Returning Indian would be entitled, without the prior approval of or intimation to RBI, to all or any of the following benefits :

- (a) To maintain and operate their foreign currency accounts with banks abroad.
- (b) To retain their foreign currency assets outside India - such as shares, securities, business investments, life insurance policies, (provided premium on such policy is paid out of foreign currency abroad or out of RFC account held with an authorised dealer in India), immovable property, etc. and to transfer or dispose of and re-invest the proceeds of such assets.
- (c) To enjoy complete freedom for utilisation of all their foreign currency assets and the sale proceeds thereof received after return to India and to gift or settle all or any part of such assets.
- (d) To hold or dispose of or invest in any manner they deem fit, the income from their foreign currency assets.
- (e) To retain abroad any pension or retirement benefits accruing after return to India.

A Returning Indian can also open a Resident Foreign Currency (RFC) account with any bank in India for crediting funds brought by him to India at the time of return. This account can be opened without RBI permission and can be maintained in any convertible currency. A Returning Indian is required to redesignate his NRE account in India as Resident account or transfer the funds held in such account to RFC Account. An FCNR account can be continued until maturity and upon maturity,

balance in FCNR account may be transferred to RFC account or converted to Indian rupees and credited to Resident rupee account.

Income from overseas assets or sale proceeds of such assets as well as pension received from abroad can be credited to the RFC account. Interest earned on this account will be exempt from tax as long as the status of the Returning Indian is "non-resident" or "not ordinarily resident" under the Income-tax Act.

Funds held in RFC account can be freely withdrawn for local payments and can also be remitted abroad for any bonafide purpose of the account holder or his dependents.

A Returning Indian desiring to go abroad again for employment, business or vocation, can transfer his funds in RFC account to his NRE/FCNR account.

CHAPTER XI

OTHER MISCELLANEOUS PROVISIONS

- A. In case, NRIs desire to place a deposit in FCNR account in any convertible currency other than the designated currency, authorised dealers can undertake with the depositor a fully covered swap in that currency against the desired designated currency. Such swaps can also be done between two designated currencies. (Designated currencies are Pound Sterling, US Dollar, Japanese Yen, Euro and such other currencies as designated by RBI from time to time).
- B. NRIs/PIO can bring into India foreign currency in cash to the extent of U.S. Dollars 5,000 or its equivalent. An additional amount upto U.S. Dollars 5,000 or its equivalent in drafts or cheques can also be brought in by the NRIs/PIO. In case the amount brought in exceeds U.S. Dollars 10,000, such amount should be declared upon arrival to the Customs authorities, in the prescribed form.
- C. Banks have been authorised by law to pay the amount standing to the credit of the deceased NRI/PIO depositor to the nominee of such depositor. Nomination facility, which can be given in the name of an individual only, is available to all types of non-resident deposits. The nomination has to be made in the prescribed form and can be cancelled or altered in accordance with the applicable regulations. The nominee can be a resident or a non-resident. The authorised dealers/authorised banks may allow remittance of funds lying in the NRE/FCNR account of the deceased account holders to the

non-resident nominee. However, remittance of funds outside India for meeting liabilities, if any, of the deceased account holder, by the resident nominee, will require prior permission from RBI.

- D. RBI has granted general permission to any person resident outside India to transfer any security by way of gift to any person resident in India.
- E. RBI has issued a notification to provide that on and from 1st April 2002, no deposits can be placed under the NRNR scheme or NRSR scheme by NRIs either by way of renewal of deposit or otherwise. The existing deposit under the NRNR scheme will be allowed to be continued upto maturity. On maturity of such deposit, the maturity proceeds will be allowed to be credited to the NRE account of the NRI. RBI vide a recent notification has clarified that NRNR deposits credited to NRE account can be subsequently transferred to the FCNR account. If the NRNR deposit holder does not hold an NRE account he may be allowed to repatriate the maturity proceeds outside India. NRNR deposits maturing after 1st April 2002 held by NRNR deposit holders who have become residents may be credited to their RFC account. As regards the existing deposit under the NRSR scheme, the maturity proceeds will be allowed to be credited to the NRO account of the NRI.

NRIs/PIO are permitted to make remittances upto US\$ 1,000,000 per financial year out of balance held in their NRO account without the prior approval of RBI. The remittance interalia includes sale proceeds of immovable property and balances representing assets acquired by them by way of inheritance/legacy.

- F. RBI has recently permitted resident individual to make a rupee gift to a NRI/PIO who is a close relative of the resident individual [close relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer. The amount should be credited to the Non-Resident (Ordinary) Rupee Account (NRO a/c) of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c. The gift amount should be within the overall limit of USD 200,000 per financial year as permitted under the Liberalised Remittance Scheme (LRS) for a resident individual. It would be the responsibility of the resident donor to ensure that the gift amount being remitted is under the LRS and all the remittances under the LRS during the financial year including the gift amount have not exceeded the limit prescribed under the LRS.

Rights/Bonus Shares

RBI has granted general permission to Indian companies to issue and send out of India, rights shares to non-resident investors, acquiring such shares, provided:

- (a) the issue of rights shares does not bring any change in the percentage of foreign equity already approved under the Foreign Direct Investment Scheme referred to in Chapter VI;
- (b) the existing shares on which the rights shares are proposed to be issued are held by the non-resident shareholders with RBI's permission and where the shares were issued under the general permission of RBI, the Indian company had made the requisite report to the RBI in the prescribed form;
- (c) the shares are not issued to the non-resident shareholders at a price lower than that at which the shares have been offered to the resident shareholders;
- (d) the rights shares are subject to the same restrictions with regard to repatriability and other conditions as are applicable to the original shares against which the rights shares are issued;
- (e) the amount of consideration for the purchase of rights shares by NRIs/PIO is received through normal banking channels by way of inward remittance or by debit to the FCNR/NRE account of the NRI/PIO concerned when the shares are issued on repatriation basis;
- (f) In respect of shares issued on non-repatriation basis, the amount of consideration may also be paid by way of debit to the NRO account of the NRI/PIO concerned.

RBI has granted general permission to Indian companies to issue bonus shares to non-resident shareholders provided:

- (a) The shares against which bonus shares are issued were acquired/held by the non-resident shareholder in accordance with the applicable rules/regulations;
- (b) The bonus shares acquired by the non-resident shareholder shall be subject to the same conditions including restrictions with regard to repatriability as are applicable to the original shares;
- (c) The Indian company makes the requisite report to the RBI in the prescribed form.

Compulsory filing of Tax Returns in India

An NRI/PIO having taxable income in India must file his return of income in the normal course and pay the legitimate tax dues as provided by law.

As an exception, an NRI/PIO need not file a return if his total chargeable income consists only of investment income and/or income by way of long-term capital gains and appropriate tax has been deducted at source from such income. For the above purposes, the person filing the tax return should be non-resident as per the Income-tax definition.

CHAPTER XII

DOUBLE TAXATION AVOIDANCE AGREEMENTS

The Government of India has entered into double taxation avoidance agreements (tax treaties) with several countries with the principal objective of evolving a system for the respective countries to allocate the right to tax different types of income on an equitable basis. Tax treaties serve the purpose of providing full protection to tax-payers against double taxation and also aim at preventing discrimination between the tax-payers in the international field. The NRIs/PIO would, therefore, be well advised to take advantage of such treaties in tax planning for their investments in India.

It may sometimes happen that owing to reduction in tax rates under the domestic law taking place after coming into existence of the treaty, the domestic rates become more favourable to the NRIs/PIO. Since the object of the tax treaties is to benefit the NRIs/PIO, they have, under the Indian tax provisions, the option to be assessed either as per the provisions of the treaty or the domestic law of the land.

In order to avoid any demand or refund consequent to assessment and to facilitate the process of assessment, the concerned authorities in India have provided that tax shall be deducted at source out of payments to NRIs/PIO at the prevailing rates at which the particular income is made taxable under the tax treaties.

