ICAI – WIRC Seminar

Dos and Don’ts for NRIs

Contents

- **Meaning - NRI and PIO?**
- **Dos and Don’ts - General**
- **NRIs leaving India – typical questions**
- **NRIs residing abroad**
  - Investment opportunities in India for NRIs
  - Borrowing and Lending by/to NRIs
  - Overview of bank accounts for NRIs
  - Remittance from NRO accounts of NRIs
- **Returning NRI’s – typical questions**

Meaning – NRI & PIO

Who is a NRI?

- *'Non-resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a **P**erson of **I**ndian **O**rigin
- A PIO# means a citizen of any country other than Bangladesh or Pakistan, if:

  (*a*) he at any time held an Indian passport; or

  (*b*) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

  (*c*) the person is a spouse of an Indian citizen or a person referred to in sub-clause (*a*) or (*b*)

  **As per FEM (Deposit regulations), 2000*

  # NRI could mean differently due to difference in PIO definition

Dos and Don’ts for NRIs - General

Approaching FEMA transactions - Dos

- **Dos for NRIs**
  - Learn to distinguish between a PRII and a PROI
  - Learn to distinguish current account transactions from capital account transactions
  - As far as possible inform respective persons of the change of residential status
  - Keep a track of investments made from rupee funds in India and funds remitted from abroad
  - Identify transactions requiring regulatory approvals before undertaking the same
  - Clearly understand the repatriability of sale proceeds from assets located in India
  - Comply with statutory timelines for filing documentation/ reporting requirements for different transactions

Approaching FEMA transactions – Don'ts

- **Don'ts for NRIs…**
  - Executing capital account transactions not covered by a general permission
  - Effecting current account payments that are prohibited or otherwise in excess of specified limits without necessary approvals
  - Instructing residents to make onward payments on their behalf
  - Debits/credits not prescribed for respective bank accounts in India
  - "Netting off" transactions between two or more parties

Approaching FEMA transactions – Don'ts

- **Don'ts for NRIs**
  - Investing in prohibited entities (incorporated or not) engaged in
    - the business of chit fund, or
    - Nidhi Company, or
    - agricultural or plantation activities, or
    - real estate business, or construction of farm houses, or
    - trading in TDRs

    "real estate business" shall not include development of townships, construction of residential/commercial premises, roads or bridges.

NRIs leaving India – Typical questions

NRIs leaving India

Who qualifies as a PROI? And When?

- **Purpose of leaving India**
  - For or on taking up employment overseas
  - For carrying on outside India a business or vocation
  - Any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period
  - Students going abroad

In either case the individual would qualify as 'a person resident outside India'

NRIs leaving India

- **Can an NRI continue to hold assets in India**
  - Bank accounts
  - Immovable property
  - Shares, debentures etc in Indian companies … … …

- **Can a resident continue discharging the liabilities in India after he becomes a NRI**
  - Maintenance and charges in respect of assets in India
  - Housing and other loans … … …

NRIs leaving India

- **Inform the following of change in residential status:**
  - Banker (also where demat accounts are held)
  - Companies in which shares are held
  - Shares, debentures etc in Indian companies

Investment opportunities in India for NRIs

Investment opportunities in India for NRIs

- **Broadly, NRIs may invest in India on:**
  - a repatriation basis
  - a non Repatriation basis

Investment opportunities in India for NRIs

- **Investments on repatriation basis**
  - Government dated securities (other than bearer securities)/ treasury bills.
  - Units of domestic mutual funds.
  - Bonds issued by a public sector undertaking in India.
  - NCDs of Indian company
  - Shares in Public Sector Enterprises being disinvested by the Govt of India
  - Shares and convertible debentures of Indian companies under FDI scheme (including automatic route & FIPB).
  - Shares and convertible debentures of Indian companies through stock exchange under **P**ortfolio **I**nvestment **S**cheme.
  - Perpetual debt instruments and debt capital instruments issued by banks in India.

Investment opportunities in India for NRIs

- **Investments on non repatriation basis**
  - Government dated securities/ treasury bills.
  - Units of domestic mutual funds
  - Units of Money Market Mutual Funds in India.
  - NCDs of Indian company
  - The capital of a firm or proprietary concern in India, not engaged in any agricultural or plantation activity or real estate business.
  - Specified deposits Commercial Paper issued by an Indian company.
  - Shares and convertible debentures of Indian companies other than under PIS..

Investment opportunities in India for NRIs

- **Can NRIs sell securities purchased in India**

Investment opportunities in India for NRIs

- **Investment in immovable property**
  - other than agricultural land/ plantation property or a farm house out of repatriable and non-repatriable funds.
- **Can NRI invest in commercial property?**

Investment opportunities in India for NRIs

- **Can proceeds from disposal of immovable property be repatriated?**
- NRIs can repatriate:
  - Sale proceeds of immovable property acquired in India to the extent of repatriable funds used for acquiring the property, up to two residential properties.
- **What happens to the balance amount?**
- **What happens to sale proceeds of a third residential property?**
- **What happens to sale proceeds of commercial property?**

Investment opportunities in India for NRIs

- **Can housing loan be availed by NRI from a Housing Finance Company in India?**
- **Can the housing loans be repaid by resident Indians:**
  - Housing Loan in rupees availed of by NRIs from ADs/Housing Financial Institutions can be repaid by the close relatives in India of the borrower.
- **Can the housing loans taken while resident in India be repaid from abroad through inward remittances by NRI?**

Lending to residents by NRIs

- **Can NRI lend to a person resident in India on a repatriation basis?**
  - Loans may be given to Close relatives subject to **conditions**.
  - NCDs of Indian companies
- **Can NRI lend to a person resident in India on a non repatriation basis?**
  - Loans may be given to a PRII subject to **conditions**.
  - NCDs of Indian companies

Lending to residents by NRIs

- **Common conditions for issuing NCDs to NRIs on repatriation as well as non repatriation basis**
  - Issue of NCDs is made by public offer
  - Rate of interest does not exceed PLR of SBI plus 300 b.p.
  - Period of redemption is not less than 3 years
  - the borrowing company does not carry on agricultural/ plantation/ real estate business/ Trading in TDRs or does not act as Nidhi or Chit Fund company
  - Relevant documents to be filed with RBI within 30 days from date of borrowing
  - Percentage of NCDs issued to NRI must be consistent with the overall ceiling prescribed for issue of shares/debentures

Borrowing from residents by NRIs

- **Borrowing of funds from AD in India**
- **Borrowing of funds from persons other than ADs in India**

Investment opportunities in India for NRIs

- **Can NRI maintain bank accounts in India. If yes what type of accounts?**
  - NRO
  - NRE
  - FCNR-B

Overview of different bank accounts

	FCNR-B	NRE	NRO
Who can open	NRIs (Individuals/entities of Bangladesh/ Pakistan nationality /ownership require prior approval of RBI)	NRIs (Individuals/entities of Bangladesh/ Pakistan nationality /ownership require prior approval of RBI)	Any PROI (other than resident of Nepal and Bhutan) (Individuals/ entities of Bangladesh/ Pakistan nationality /ownership require prior approval of RBI)
Joint holding	In the names of two or more non-resident Indians/	In the names of two or more non-resident Indians/	May be held jointly with residents
Currency in which account is denominated	Pound Sterling, US Dollar, Jap. Yen, Euro, Canadian Dollar and Australian Dollar	Indian Rupees	Indian Rupees
Type of account	Term Deposit only	Savings, Current, Recurring, Fixed Deposit	Savings, Current, Recurring, Fixed Deposit

Overview of different bank accounts

	FCNR-B	NRE	NRO
Foreign currency loans in India to accountholders / third parties:	Not permitted	Not permitted	Not permitted
Loans to account holders / third parties Outside India:	Permitted up to Rs 20 lacs for Fund based and / or non fund based facilities for bonafide purposes	Permitted up to Rs 20 lacs for Fund based and / or non fund based facilities for bonafide purposes	Not permitted

Overview of different bank accounts

	FCNR-B	NRE	NRO
Loans to accountholder in India:	Permitted upto Rs 20 lacs for (i) personal purposes or for carrying on permitted business activities#. ii) FDI on non-repatriation basis iii) Acquisition of flat/ house in India for own residential use	Permitted upto Rs 20 lacs for (i) personal purposes or for carrying on permitted business activities#. ii) FDI on non-repatriation basis iii) Acquisition of flat/ house in India for own residential use	Personal requirement an/ or business purpose#
Loans to third parties in India:	Permitted up to Rs 20 lacs Loan proceeds to be used for: Personal purposes, business# Provided no consideration is exchanged overseas for this security.	Permitted up to Rs 20 lacs Loan proceeds to be used for: Personal purposes, business# Provided no consideration is exchanged overseas for this security.	Personal requirement an/ or business purpose#
#The loans cannot be utilized for the purpose of re-lending or for carrying on agriculture or plantation activities or for investment in real estate business.			

Remittances from India

- **Can the NRI draw money from his NRO account while staying abroad**
  - General Permission to remit current incomes
  - USD 1 million scheme
- **What kind of remittances are permitted for students going abroad for education?**

NRIs returning to India – Typical questions

NRIs returning to India

- **Inform the following of change in residential status:**
  - Banker (also where demat accounts are held)
  - Companies in which shares are held
  - Shares, debentures etc in Indian companies
- **Is there a time limit for the above intimation?**

Returning Indians

- **Can one continue to hold assets abroad?**
  - As per Section 6(4) of FEMA returning NRIs are permitted to hold, own, transfer or invest in foreign currency, security or any immovable property situated outside India which was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India
- **To be able to enjoy the above exemption, is there a specified minimum time for which one must stay overseas?**
- **Can one reinvest earnings from assets which acquired overseas while one was a person resident outside India?**

Returning Indians

- **Can one continue proprietary/ partnership firm abroad?**
- **Can one continue to hold movable assets such as car, jewellery etc outside India?**
- **Can one continue to hold bank accounts abroad after returning to India?**
- **What is the RFC account scheme and advantages of the same?**

Thank you

Please note that discussions in this presentations are purely of academic nature and based on the speaker's interpretation of the law. Any views expressed by the speaker may not necessarily be the view of any regulator(s). While the presentation seeks to capture important aspects of the relevant regulations, they may not be adequate for concluding commercial decisions. Expert advice based on actual facts is imperative prior to executing any transaction.