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FREQUENTLY ASKED QUESTIONS

Date : Apr 06, 2023
Purchase of Immovable Property

Part I.**Purchase of immovable property outside India by Resident Individuals**

These FAQs attempt to put in place the common queries that users have on the subject in easy-to-understand language. However, for conducting a transaction, the Foreign Exchange Management Act, 1999 (FEMA) and the rules and regulations made or directions issued thereunder may be referred to. The relevant principal provisions are Foreign Exchange Management (Overseas Investment) Rules, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022 dated August 22, 2022 as amended from time to time.

Q.1 Can a resident continue to hold immovable property outside India which was acquired by him when he was a non-resident?
Q.2 Can a resident individual send remittances and purchase property outside India?
Q.3 To whom do the restrictions of transferring property outside India not apply?
Q.4 How can immovable property be acquired outside India by a resident?

Q.1 Can a resident continue to hold immovable property outside India which was acquired by him when he was a non-resident?

Answer: According to section 6(4) of the FEMA, a person resident in India can hold, own, transfer or invest in any immovable property situated outside India if such property was acquired, held or owned by him/ her when he/ she was resident outside India or inherited from a person resident outside India.

Q.2 Can a resident individual send remittances and purchase property outside India?

Answer: A resident individual can send remittances under the Liberalised Remittance Scheme (LRS) for purchasing immovable property outside India. The remittance under the Liberalised Remittance Scheme may be consolidated in respect of relativesⁱ if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme.

Q.3 To whom do the restrictions of transferring property outside India not apply?

Answer: The prohibition of a resident acquiring property outside India is not applicable if:

- The resident is a foreign national; or
- The property was acquired before July 8, 1947 and continued to be held after obtaining permission of Reserve Bank; or
- If it is acquired on a lease not exceeding five years

Q.4 How can immovable property be acquired outside India by a resident?

Answer: Immovable property can be acquired outside India:

(i). A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition.

(ii). A person resident in India may acquire immovable property outside India from a person resident outside India—

(a) by way of inheritance;

(b) by way of purchase out of foreign exchange held in RFC account;

(c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank:

Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;

(d) jointly with a relative who is a person resident outside India;

(e) out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act;

(iii) An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time;

Part II.**Purchase of immovable property in India by Non-Resident Individuals**

These FAQs attempt to put in place the common queries that users have on the subject in easy to understand language. However, for conducting a transaction, the Foreign Exchange Management Act, 1999 (FEMA) and the rules made, or directions issued thereunder may be referred to. The relevant principal rules are the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 as amended from time to time. The directions issued are consolidated in Part II of the Master Direction No 12 on Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999.

Q.1 How can Non-resident Indians (NRIs) / Overseas Citizens of India (OCIs) acquire immovable property in India?
Q.2 What are the accepted modes of payment for property acquired in India?
Q.3 Can Foreign Embassies/ Diplomats/ Consulate Generals acquire property in India?
Q.4 Can foreign nationals acquire property in India?
Q.5 How can a Long Term Visa (LTV) holder acquire property in India?
Q.6 Can a spouse of an NRI/ OCI who is not a NRI/ OCI acquire property in India?
Q.7 Can a non-resident repatriate the sale proceeds of immovable property in India?
Q.8 What is the meaning of transfer?

Q.1 How can a Non-resident Indian (NRI)ⁱⁱ and an Overseas Citizen of India (OCI)ⁱⁱⁱ acquire immovable property in India?

Particulars	NRI/ OCI (NDI Rules, 2019)
Purchase (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(a)]
Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(b)] who is a relative
Acquire (any IP) as inheritance from	a. Any person who has acquired it under laws in force [24(c)]; b. Resident [24(c)]
Sell (other than agricultural land/ farmhouse/ plantation etc) to	Resident/ NRI/ OCI [24(e)]
Sell (agricultural land) to	Resident [24(d)]
Gift (other than agricultural land) to	Resident/ NRI/ OCI [24(e)]

Gift (agricultural land) to	Resident [24(d)]
Gift residential/ commercial property to	Resident/ NRI/ OCI [24(e)]

Q.2 What are the accepted modes of payment for property acquired in India?

Answer: Payment for immovable property has to be received in India through banking channels and is subject to payment of all taxes and other duties/ levies in India. The payment can also be made out of funds held in NRE/ FCNR(B)/ NRO accounts of the NRIs/ OCIs. Payments should not be made through travellers' cheque and foreign currency notes.

Q.3 Can Foreign Embassies/ Diplomats/ Consulate Generals acquire property in India?

Answer: Foreign Embassy/ Diplomat/ Consulate General, can purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –

- Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase/sale, and
- The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

Q.4 Can foreign nationals acquire property in India?

Answer:

- Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong or Democratic People's Republic of Korea (DPRK), irrespective of their residential status, cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years. This prohibition shall not be applicable to an OCI.
- Foreign nationals of non-Indian origin resident in India (except 11 countries listed at (a) above) can acquire immovable property in India.
- Foreign nationals of non-Indian origin resident outside India can acquire/ transfer immovable property in India, on lease not exceeding five years and can acquire immovable property in India by way of inheritance from a resident.

All other acquisitions/ transfers by foreign nationals will require the prior permission of RBI.

Q.5 How can a Long Term Visa (LTV) holder acquire property in India?

Answer: Citizen of Pakistan, Bangladesh or Afghanistan belonging to minority community (Hindu, Christian, Sikh, Parsi, Buddhist, Jain) in that country and residing in India who has been granted an LTV by the Central government can purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment. However, such acquisition is subject to the conditions as specified under Rule 28 of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

Q.6 Can a spouse of an NRI/ OCI who is not a NRI/ OCI acquire property in India?

Answer: A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse subject to the conditions laid down in Rule 25 of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

Q.7 Can a non-resident repatriate the sale proceeds of immovable property in India?

Answer:

- A person who has acquired the property U/s 6(5)^{iv} of FEMA or his successor cannot repatriate the sale proceeds of such property without RBI approval.
- Repatriation up to USD 1 million per financial year is allowed, along with other assets under (Foreign Exchange Management (Remittance of Assets) Regulations, 2016) for NRIs/ PIOs and a foreign citizen (except Nepal/ Bhutan/ PIO) who has (i) inherited from a person referred to in section 6(5) of FEMA, or (ii) retired from employment in India or (c) is a non-resident widow/ widower and has inherited assets from her/ his deceased spouse who was an Indian national resident in India.
- NRIs/ PIOs can remit the sale proceeds of immovable property (other than agricultural land/ farm house/ plantation property) in India subject to the following conditions:
 - The immovable property was acquired in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.;
 - The amount for acquisition of the property was paid in foreign exchange received through banking channels or out of the funds held in foreign currency non-resident account or out of the funds held in non-resident external account;
 - In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

Q.8 What is the meaning of transfer?

Answer: As per section 2(ze) of FEMA transfer means, sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

ⁱRelative is as defined in section 2(77) of the Companies Act, 2013.

ⁱⁱNRI refers to a person resident outside India who is a citizen of India.

ⁱⁱⁱOverseas Citizen of India (OCI) is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

^{iv}Section 6(5) of FEMA states that a person resident outside India may hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.