Preface

1. ***Author** has felt when he **qualified** as Chartered Accountant (**CA**) **in Year 1985** that **legal provisions' interpretations** are **big challenge** for legal professionals, govts'. officials and public at large **in India** and **outside India**.*

2. ***Author** has **realized** that **something** should **be developed to resolve** this **challenge** in India and outside India.*

3. ***Author** has **started compiling** Frequently Asked Questions (**FAQs**) on many subjects where his 100% **answers are precisely based on Yes or No i.e. white or black nothing is grey***

4. ***Author** has **compiled approximately 150 +(plus) research papers / books with 25 thousand + (plus) pages** on many prevailing subjects / acts in India and outside India.*

5. ***Author's 1st paper book** is now **being published** under head FAQs on Enforcement Directorate (ED) **where 571 FAQs are replied** based on Yes or No i.e. white or black nothing is grey*

6. *This **book** is also **containing***
   - *(i) Foreign Exchange Management Act (**FEMA**) 1999 and rules / regulations*
   - *(ii) Prevention of Money Laundering Act (**PMLA**) 2002 and rules / regulations*
   - *(iii) Fugitive Economic Offenders Act (**FEOA**) 2018 and rules / regulations*

7. *This **book** is **published with Sai Kripa and dedicated** to my father (late) **Mr. M.R. Agarwal**, Mother **Mrs. R.D. Agarwal**, wife **Mrs. Snigdha Agarwal**, daughter **Ms. Soumya Agarwal**, daughter **Ms. Sanya Agarwal** and dedicated team headed by **Rajat Kumar***

- *I trust that you will be **enriched by reading this book***

With best wishes,
CA. Satish Agarwal
B. Com (Hons.) FCA

satishagarwal307@yahoo.com
+91-9811081957
www.femainindia.com

Author’s Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. *Chartered Accountants* ***since 1985*** *with a team of dynamic young professionals se****rving clients from various business sectors*** *including public listed companies and government undertakings. Firm was also* ***registered with PCAOB*** *(****USA****)* ***for undertaking audits*** *and other* ***work of US GAAP****.*

He is ***regularly advising on several matters to*** *Institute of Chartered Accountant of India (****ICAI****) and also to Ministry of Commerce (****MoC****)* ***for*** *Foreign Trade Agreements (****FTAs****) and World Trade Organization (****WTO****)* ***for securing India’s best interests****.*

He is continuously ***advising on*** *Foreign Investments (****FIs****)* ***in India*** *and also on Overseas Direct Investments (****ODIs****)* ***outside India****.*

He is known for his ***expertise in incorporating companies*** *in most of countries* ***across the world****.*

He has ***written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages*** *available “freely” on certain portals like:*

https://taxguru.in/author/satishagarwal307_1957
Or
www.femainindia.com

Few out of abovementioned Research papers / books are as under:

1. *Book on Enforcement Directorate (ED) in India- (Book with 617 pages)*
2. *Director of Revenue Intelligence (DRI) in India*
3. *Central Bureau of Investigation (CBI) in India*
4. *National Investigation Agency (NIA) in India*
5. *Serious Fraud Investigation Office (SFIO) in India*
6. *Financial Intelligence Unit (FIU-IND) in India*
7. *Central Vigilance Commission (CVC) in India*
8. *Narcotics Control Bureau (NCB) in India*
9. *Research & Analysis Wing (R&AW) in India*
10. *Economic Offence Wing (EOW) in India*
11. *Intelligence Bureau (IB) in India*
12. *Director General of Income Tax Criminal Investigation (DGITCI) in India*
13. *National Company Law Tribunal (NCLT) in India*
14. *Security Exchange Board of India (SEBI) in India*
15. *Prevention of Corruption (PC) Act ,1988 in India*

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
25. *Annual Performance Report (APR) for Investments outside India*
26. *Foreign Trade Agreements (FTAs) executed by India*
27. *Statutory Obligations for Companies Operating in India*
28. *Significant Beneficial Owners (SBO) in India*
29. *Significant Economic Presence (SEP) in India*
30. *Place of Effective Management (POEM) in India*
31. *Liberalized Remittance Scheme (LRS) for residents of India*
32. *Foreign Liability and Asset (FLA) return in India*
33. *FATCA agreement with USA*
34. *Double Taxation Avoidance Agreement (DTAA) with USA*
35. *Foreign Tax Credit (FTC) in India*
36. *Corporate Frauds (CFs) in India*
37. *Export of Goods and Services under FEMA, 1999 in India*
38. *Imports of Goods and Services under FEMA, 1999 in India*
39. *External Commercial Borrowings (ECBs) in India*
40. *Overseas Direct Investments (ODIs) under FEMA, 1999 in India*
41. *Acquisition of Immovable Properties by Non-residents under FEMA, 1999 in India*
42. *Compounding of Contraventions under FEMA, 1999 in India*
43. *Foreign Branch Office (BO) + Liaison Office (LO) + Project Office (PO) under FEMA, 1999 in India*
44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*

Acquisition of Immovable Property by Non Resident in India

INDEX

(A) Acquisition of Immovable Property by Non Resident

1. Introduction on Acquisition in India

(i) **(a)** Non Residents are permitted for acquisition through purchase + gift + inheritance of the immovable properties in India under the FEMA, 1999

(b) Non Residents are permitted for transfer through sale to resident of India + non resident of India (both) but gift to resident of India (only) and also inheritance to resident of India (only) of the immovable properties under the FEMA (Acquisition and Transfer of Immovable property in India) Regulations, 2000 as amended from time to time through Notifications and Circulars of the RBI.

(ii) **Definition of Non-resident is including the followings:-**

(a) **Non resident Indians (NRI's) under the Indian Citizen Act (ICA) 1955**

- NRI = Non-resident of India + Indian Citizen ((Indian Passport holder)(both))

(b) **Foreign Citizens of Indian Origin as commonly known as Person of Indian Origin (PIO) under the ICA, 1955**

- PIO = Non-resident of India + foreign Passport + Indian Origin (all together)

(c) **Foreign Citizens of Non-Indian Origin under the ICA, 1955**

- Non NRI + PIO = Non Resident of India + foreign Passport + Non Indian origin (all together)

(iii) RBI is not deciding the residential status as same being decided by operation of law under the FEMA, 1999

(iv) Onus to prove the residential status is on the non resident where it is questioned by the govt. authorities

(v) Resident of India but foreign citizen is treated as Not Permanent Resident (NPR) of India

(vi) **(a)** Non-resident of India is permitted to hold + owned + transfer + invest in Indian currency, security or immovable property as situated in India where these were acquired, held or owned when he was resident of India *or*

(b) *Non resident has inherited from a resident of India under the FEMA, 1999*

2. *Acquisition of Agricultural Land etc.*

(i) *Non residents of India including NRI or PIO are not permitted to acquire an agricultural land, plantation property or farm house in India*

(ii) *Non residents are permitted to hold where these were acquired, held or owned when he was resident of India or he has inherited from resident of India*

3. *Repatriation against Sale Proceeds from India*

(i) *Non residents are permitted to repatriate maximum USD 1 million per financial year through NRO account as maintained in India*

(ii) *Maximum USD 1 million is also include the sale proceeds of the assets as acquired under inheritance or settlement in India*

(iii) *Maximum USD 1 million limit is not applicable for repatriation through NRE account where sale proceeds of immovable property is already deposited into NRE account through NRO account after TDS within maximum USD 1 million limit per financial year*

4. *Acquisition through Purchase + Gift + Inheritance*

(i) *Not permanent resident of India is permitted to acquire a residential or commercial property in India through purchase only under general permission route of the RBI*

(ii) *Not permanent resident of India including NRI or PIO from 10 specified countries are not permitted to acquire a residential or commercial property in India through purchase + gift + inheritance without the permission from the RBI. List of the 10 specified countries is as following:-*

(a) ***Pakistan***

(b) ***Bangladesh***

(c) ***Sri Lanka***

(d) ***Afganistan***

(e) ***China***

(f) ***Iran***

(g) ***Nepal***

(h) ***Bhutan***

(i) Hong Kong

(j) Macau

(iii) Documents for General Permission Route

- *Non-residents are not required to file any document for acquisition of immovable properties under general permission route of the RBI.*

(iv) Restriction on number of residential or commercial property

(a) *NRI or PIO is permitted to purchase a residential or commercial property without any restriction on number of the properties for investments purpose only.*

(b) *Henceforth NRI or PIO is permitted to purchase an unlimited in numbers a residential or commercial property for investments purpose only.*

(c) *NRI or PIO is not permitted to purchase the properties for trading purpose*

(d) *Difference between for investments and for trading purpose of the immovable properties are always debatable as needed reasonableness in period of holding of the properties.*

(v) Purchase of Immovable property by Foreign Citizens of Non-Indian Origin

(a) *Foreign Citizens of Non-Indian Origin as Not permanent resident of India are permitted to purchase immovable property under general permission route under FEMA, 1999*

(b) *However the abovementioned Foreign Citizens of Non-Indian Origin are required to obtain permission from the state govt. where any permission is* *prescribed for the Foreign Citizens of Non-Indian Origin as Not permanent resident of India.*

(c) Permission from RBI for 10 specified countries

- *Permission from the RBI is required for purchase of immovable property by the Foreign Citizen or entity of the **10** specified countries.*

5. Purchase of Immovable property by foreign entity

- ***Purchase through BO or PO***

(i) *BO or PO of foreign entity is permitted to purchase an immovable property without permission of the RBI where property purchase is necessary or incidental to carry on the business in India*

(ii) *Foreign entity is required to make the payment against immovable property through foreign inward remittance under normal banking channel*

(iii) *Foreign entity is required to file a declaration in Form IPI as to be filed with the RBI within 90 days from the date of purchase of property*

(iv) *Foreign entity is permitted to mortgage the property with AD bank as security for the borrowings by BO or PO*

(v) *Foreign entity is required to repatriate the sale proceeds on winding up of BO or PO with approval from the RBI*

(vi) Purchase through BO or PO as belonging to 10 specified countries

- *BO or PO belonging to the 10 specified countries is permitted **with permission** from the RBI where property purchase is necessary or incidental to carry on the business in India*

(vii) Purchase through LO

(a) *LO is not permitted to purchase an immovable property in India in any circumstance*

(b) *LO is permitted to take an immovable property on lease (rent) for a period not exceeding 5 years without permission from the RBI*

6. *Acquisition through Gift*

(i) ***NRI or PIO is permitted to acquire through gift from:-***

(a) ***Resident of India***

(b) ***NRI***

(c) ***PIO***

(ii) ***NRI or PIO is not permitted to acquire through gift of followings:-***

(a) ***Agricultural land***

(b) ***Plantation Property***

(c) ***Farm house***

(iii) *Hence NRI or PIO is permitted to acquire residential or commercial property only*

(iv) *Foreign Citizens of Non-Indian Origin are not permitted to acquire an immovable property through gift + inheritance (both)*

7. *Acquisition through Inheritance from resident of India*

- ***Permitted to acquire through inheritance from:-***

(a) ***NRI***

(b) ***PIO***

(c) ***Foreign Citizens** of Non-Indian Origin*

(B) Transfer of Immovable Property in India

1. Transfer through sale of immovable property

(i) Transfer by NRI

NRI's are permitted to sale the immovable properties to the following persons only:-

(a) ***Resident*** *of* ***India***

(b) ***NRI***

(c) ***PIO***

(ii) Transfer by PIO

PIO's are permitted to sale the immovable properties to the following persons only:-

(a) ***Resident*** *of* ***India***

(b) ***NRI***

(c) ***PIO*** *with permission from the RBI*

(iii) Transfer by Foreign Citizens of 10 specified countries

Foreign Citizens of Non-Indian Origin are permitted to sale the immovable properties to the following persons only ***with permission*** *from the RBI:-*

(a) ***Resident*** *of* ***India***

(b) ***NRI***

(c) ***PIO***

2. Transfer through sale of Agricultural Land etc.

(i) *NRI or PIO is permitted to sale an agricultural land, plantation property or farm house to citizens* **+** *resident of India*

(ii) *Foreign Citizens of Non-Indian Origin is permitted to sale an agricultural land, plantation property or farm house to citizens + resident of India with permission from the RBI*

3. Transfer through gift of immovable property

(i) Transfer by NRI or PIO

NRI's or PIO's are permitted to gift the immovable properties to the following persons only:-

(a) ***Resident*** *of* ***India***

(b) ***NRI***

(ii) Transfer by Foreign Citizen of Non-Indian Origin

Foreign Citizens of Non-Indian Origin are permitted to transfer to resident of India + NRI (both) through gift the immovable properties with permission from the RBI

4. Transfer through gift of agricultural land etc.

(i) Transfer by NRI or PIO

NRI's or PIO's are permitted to gift the agricultural land, plantation property or farm house to the following persons only:-

- ***Citizen + resident*** *of* ***India***

(ii) Transfer by Foreign Citizen of Non-Indian Origin

Foreign Citizens of Non-Indian Origin are permitted to transfer the agricultural land, plantation property or farm house with permission from the RBI and transfer to resident + citizen of India (only)

5. Transfer through Mortgage

(i) Transfer by NRI or PIO

(a) NRI or PIO is permitted to transfer through mortgage to AD Bank or Housing Finance Institution in India without permission from the RBI

(b) NRI or PIO is permitted to transfer through mortgage to bank outside India with permission from the RBI.

(ii) Transfer by Foreign citizen of Non-Indian origin

Foreign Citizens of Non-Indian Origin are permitted to transfer with permission from the RBI.

(iii) Transfer by BO

BO of the foreign entity in India is permitted to mortgage to the AD Bank without permission from the RBI

(C) Payments for purchase of immovable property in India

1. Payment by NRI or PIO

(i) *NRI or PIO is permitted to make payment through direct remittance from outside India with normal banking channel or debit to the following accounts only as maintained in India:-*

(a) ***NRE account***

(b) ***FCNR account***

(c) ***NRO account***

(ii) *NRI or PIO is not permitted to make payment through travelers cheque, foreign currency notes or any other mode*

2. Repatriation against non-allotment

(i) *AD bank is permitted to allow a credit into NRE or FCNR (B) account of the NRI or PIO for refund of application money or earnest money against non- allotment of the immovable property along with interest after the TDS*

(ii) *However original payment for application money or earnest money should be debited to NRE, FCNR (B) account or direct inward remittance from outside India*

3. Housing Loan for purchase

(i) ***Housing loan for purchase is including the followings:-***

(a) For purchase of the residential accommodation

(b) For repair, renovation or improvement of the residential accommodation

(ii) ***Lender for housing loan for purchase is including the followings:-***

(a) ***AD*** *bank in* ***India***

(b) ***Housing Finance*** *Institution in* ***India***

(iii) ***Terms and Conditions include the followings:-***

(a) Terms and conditions should be in accordance to Regulation No.08 of Notification No. FEMA 4/2000-RB, dated May 03, 2000

+

(b) Terms and conditions should be in accordance to Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000

(iv) Repayment against housing Loan

(a) Through inward remittance from outside India with normal banking channel

(b) Through debit to NRE, FCNR (B) or NRO account as maintained in India

(c) Through rental income from the immovable property as purchased through bank loan

(d) Through close relatives as located in India

4. Housing Loan from employer in India

(i) Terms and conditions are including the followings:-

(a) Terms and conditions should be in accordance to Regulation No. 8A of Notification No. FEMA 4/2000- RB, dated May 03, 2000

+

(b) In accordance to A.P (DIR Series) Circular No. 27, dated October 10, 2003

(c) Loan should be granted for purchase of housing property in India

(d) Loan should be granted in accordance to employer's staff welfare scheme or staff housing loan scheme as applicable to other staff as resident of India

*(e) Employer should ensure loan amount is **not used** for any other purpose*

(f) Credit of loan should be to NRO account

*(g) Repayment should be through remittance from **outside India or** debit to NRE, NRO or FCNR (B) account*

(D) Repatriation against Sale of immovable property from India

1. Repatriation by NRI or PIO

(i) AD bank is permitted to repatriate the sale proceeds against immovable properties subject to satisfaction of the following terms and conditions:-

(a) Immovable property should be acquired by the seller in accordance to Foreign exchange law at time of acquisition + amount should be paid through direct foreign remittance from outside India or debited to NRE, FCNRC (B) or NRO account

(b) Amount of repatriation should not exceed the amount as paid at the time of purchase of immovable property in foreign exchange

2. Repatriation through NRO Account

(i) Sale proceed should be out of the property as acquired out of rupee resources

or

(ii) Loan amount is being repaid by the close relative in India

(iii) AD Bank is permitted to remit maximum USD 1 million per financial year

(iv) Permission from the RBI is required for remitting an amount exceeding USD 1 million per financial year

3. Repatriation of Sale Proceed of Property Acquired against Rupee Loan

(i) NRI or PIO is permitted to repatriate sale proceeds of residential accommodation as purchased through loan from Indian AD Bank or from housing finance institution after repayment of loan through foreign inward remittance

(ii) Balance if any be credited to NRO account

(iii) NRI or PIO is permitted to repatriate maximum USD 1 million per financial year through NRO account maintained in India

4. Repatriation of sale proceed of property acquired through Gift

(i) Sale proceeds of immovable property as acquired through gift is to be credited to NRO account *(ii)* *NRI or PIO is permitted to repatriate maximum USD 1 million per financial year through NRO account maintained in India*

5. Repatriation of sale proceeds of property acquired through Inheritance

(i) *NRI or PIO is permitted to repatriate sale proceeds of immovable property as inherited from resident of India subject to satisfaction of the following terms and conditions*

(a) Amount should not exceed maximum USD 1 million per financial year

(b) NRI or PIO is required to submit documentary evidence in support of inheritance of assets like an undertaking by remitter + certificate from CA

(c) Deed of settlement should be made by parent or close relative

(d) Original deed of settlement for verification + tax clearance certificate from Income Tax Deptt.

(e) Remittance in installment is also permitted through same AD Bank

(f) Remittance to foreign citizens of Non-Indian origin is permitted with permission from the RBI

(ii) *With permission from the RBI is required for repatriation of sale proceeds of immovable property by the foreign citizens of the 8 specified countries:-*

(a) ***Pakistan***
(b) ***Bangladesh***
(c) ***Sri Lanka***
(d) ***China***
(e) ***Afghanistan***
(f) ***Iran***
(g) ***Hong Kong***
(h) Macau

(iii) Foreign citizen of 2 specified countries are permitted an Indian Rupees (INR) only:-

(a) Nepal
(b) Bhutan

6. Repatriation against Rental income

(i) *NRI or PIO is permitted to rent out residential or commercial property without permission from the RBI*

(ii) *(a) Rent can be credited to NRO or NRE account*

or

(b) Directly can be remitted outside India

(iii) *Henceforth NRI or PIO is permitted to remit without crediting to NRO or NRE account after TDS*

(E) Purchase and sale of immovable property by foreign embassies etc.

- ***Purchase or sale of Immovable Property***

(i) *Regulation 5A of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 is applicable for purchase or sale by Foreign Embassies and Diplomats or Consulates general in India*

(ii) *However not-permitted to acquire any agricultural land, plantation property or farm house in India*

(iii) *Clearance from the Govt. of India, Ministry of External Affairs is required for purchase or sale*

(iv) *Consideration for acquisition of immovable property in India is to be paid out of fund as remitted from outside India through normal banking channel*

(F) Conclusion on Acquisition + Transfer without permission from RBI

1. Residential or Commercial Property

(i) By NRI

Transaction	NRI	PIO	Resident
Purchase **from**	Yes	Yes	Yes
Sell **to**	Yes	Yes	Yes
Gift **from**	Yes	Yes	Yes
Gift **to**	Yes	Yes	Yes
Inheritance **from**	Yes	Yes	Yes

(ii) By PIO

Transaction	NRI	PIO	Resident
Purchase **from**	Yes	Yes	Yes
Sell **to**	Yes	NO	Yes
Gift **from**	Yes	Yes	Yes
Gift **to**	Yes	NO	Yes

2. Agricultural land or plantation Property or Farm House

- **By NRI or PIO**

Transaction	NRI	PIO	Resident
Purchase **from**	NO	NO	NO
Sell **to**	NO	NO	Yes
Gift **from**	NO	NO	NO
Gift **to**	NO	NO	Yes

Published By

CA. Satish Agarwal

B.com (Hons) FCA

Practicing Chartered Accountant Since 1985

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

- ***Disclaimer***

  The contents of this article are solely for informational purpose. Neither this article nor the information's as contained herein constitutes a contract or will form the basis of a contract.

  The material contained in this article does not constitute or substitute professional advice that may be required before acting on any matter.

  While every care has been taken in the preparation of this article to ensure its accuracy at the time of publication.

  ***Satish Agarwal** assumes no responsibility for any error which despite all precautions may be found herein.*

  We shall not be liable for direct, indirect or consequential damages if any arising out of or in any way connected with the use of this article or the information's as contained herein.

July-2022